TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [illegible]

No. 115.

THE WABASH RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ALEXANDER FLANNIGAN AND VIRGIL [illegible],

IN ERROR TO THE ST. LOUIS COURT OF APPEALS OF THE STATE OF MISSOURI.

FILED [illegible], [illegible].

(16,643)

(18,646.)

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STATE OF MISSOURI, *ss:*

Be it remembered, that heretofore, to-wit, on the 2nd day of August, 1901, there was filed in the office of the clerk of the St. Louis court of appeals the following certificate:

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Be it remembered, that heretofore, to-wit: at the April term, A. D. 1901, of the circuit court, city of St. Louis, within and for the city and State aforesaid, and on the twnety-ninth day of April 1901, it being the 22nd day of said April term, 1901, of said court, the following proceeding was had in cause No. 19159, series A, of the causes in said court, wherein The Wabash Railroad Company, interpleader, is plaintiff and Alexander Flannigan *et al.*, are defendants, to-wit:

MONDAY, *April 29th*, 1901.

WABASH RAILROAD COMPANY, Interpleader,
vs.
ALEXANDER FLANNIGAN and VIRGIL RULE. } (19159–*a.*)

Now at this day come the parties herein by their respective attorneys, and the order issued herein on April 15th, 1901, commanding the defendants to show cause why a temporary injunction should not be granted against them, coming on for hearing upon the pleadings, affidavits and proofs adduced, and the court having duly considered the same, and being sufficiently advised of and concerning the premises, doth order that the prayer of plaintiff's bill be and is denied. It is further ordered by the court, that the restraining order granted against defendants on April 15th, 1901, be and is hereby dissolved.

And afterwards at the same April term, 1901, of the said court, the following further proceedings were had in said cause, to-wit:

MONDAY, *May 13th*, 1901.

THE WABASH RAILROAD COMPANY, Interpleader,
vs.
ALEXANDER FLANNIGAN ET AL. } (19159–*a.*)

Now comes plaintiff by its attorney and files herein, an affidavit for appeal, and an appeal bond, which is approved by the court, and on its motion, an appeal is allowed it from the judgment herein, to the St. Louis court of appeals; and is allowed to and including June 3rd, 1901, to file its bill of exceptions.

TUESDAY, *May 28th*, 1901.

WABASH RAILROAD CO.
vs.
ALEXANDER FLANNIGAN ET AL. } (19159–*a*.)

On motion of plaintiff by attorney, it is ordered by the court, that plaintiff be allowed until August 3rd 1901, to file its bill of exceptions.

And at the June term, 1901 of the said circuit court, the following proceedings were had in said cause, to-wit:—

WEDNESDAY, *July 24th*, 1901.

WABASH RAILROAD COMPANY
vs.
ALEXANDER FLANNIGAN ET AL. } (19159–*a*.)

On motion of plaintiff by its attorney, it is ordered by the court, that plaintiff be allowed up to and including October 7th,
3 1901, to file bill of exceptions.

MONDAY, *July 29th*, 1901.

WABASH RAILROAD COMPANY
vs.
ALEXANDER FLANNIGAN ET AL. } (19159–*a*.)

Now comes the plaintiff by its attorney and presents to the court, its bill of exceptions herein, which is allowed, signed and sealed, ordered filed and made part of the record in this cause.

STATE OF MISSOURI, } *ss*:
City of St. Louis, }

I, Henry Troll, clerk of the circuit court, city of St. Louis, within and for the city and State aforesaid do hereby certify, that the above and foregoing, is a true, full and complete transcript of the judgment in the above-entitled cause, and showing the term, and day of the term, month and year in which the same was rendered; of the orders granting an appeal, and extending time for filing a bill of exceptions, and of the entry of filing said bill of exceptions in said cause, as fully as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court, at office in the city of St. Louis,
[SEAL.] this 3rd day of August, 1901.

HENRY TROLL, *Clerk*.

4 And afterwards, to-wit: on the said 2nd day of August, 1901, the plaintiff filed the following petition:

In the St. Louis Court of Appeals, State of Missouri. In Vacation.

THE WABASH RAILROAD COMPANY (a Corporation), Plaintiff,
vs.
ALEXANDER FLANNIGAN, VIRGIL RULE, JOSEPH DIECKMAN, Shreiff of the City of St. Louis, Missouri, and Henry Troll, Clerk of the Circuit Court of the City of St. Louis, Missouri, Defendants.

The plaintiff states that it is a corporation duly organized as a consolidated corporation under the laws of the States of Ohio, Illinois and Missouri as one corporation with capacity to sue and liable to be sued in said States;

That the defendant Joseph Dieckman, is the duly elected, qualified and acting sheriff of the city of St. Louis, Missouri, and that the defendant, Henry Troll, is the duly elected, qualified and acting clerk of the circuit court of the city of St. Louis. Missouri,

Plaintiff further states that on the — day of April, 1901, it filed in the circuit court of the city of St. Louis, Missouri, a petition in words and figures as follows:

5 In the Circuit Court of the City of St. Louis, State of Missouri, April Term, 1901.

Now at this day comes The Wabash Railroad Company, and by leave of court first had and obtained, for its third amended petition, states that it was, on the 1st day of August, 1889, ever since has been continuously, without any change whatever in its status as a corporation, and now is a consolidated corporation, first organized as such in the State of Ohio and subsequently organized as such in the States of Illinois and Missouri, and duly organized as a consolidated corporation under the laws of said States of Ohio, Illinois and Missouri, as aforesaid, and that it is one and the same corporation named and described in all of the preceding petitions filed in this cause, and is and always has been since August 1st, 1889, the same corporation named and described in the petition filed in this cause on the 20th day of December, 1900, as well as in the transactions herein described. And that in the State of Illinois it employs agents at its various stations within that State, who under the laws of that State are subject to have legal processes served upon them, which are directed against the plaintiff in said State, thereby serving personally this plaintiff with process.

The plaintiff further states that at some time about, or previous to the months of May and June, in the year 1891, this plaintiff, the same plaintiff described in the petition filed in this cause December 20th, 1900, had in its employ one Peter Tourville. While in the employ of said plaintiff, said Peter Tourville earned $81.98, more or less.

6 The plaintiff further states that on the first day of April, in the year 1895, Alexander Flannigan, one of the defendants in the above entitled cause, instituted an attachment proceeding against

Peter Tourville, before James H. Wyatt, a justice of the peace for St. Clair county, Illinois, who had jurisdiction both of the subject matter and the person of the defendant, and garnishee defendant in that cause, under article two, section one, paragraph sixteen of an act of the legislature of the State of Illinois, entitled "An act to revise the law in relation to justices of the peace and constables," approved June 26th, 1895, in force July 1st, 1895, which reads as follows:

"Justices of the peace shall have jurisdiction in their respective counties in the following cases, when the amount claimed does not exceed two hundred dollars. * * * In garnishment by attachment or summons, the amount of the claim of the garnishor, and not the amount of the answer of the garnishee, shall determine the jurisdiction."

On said first day of April, 1895, writ was returned duly executed, by summoning The Wabash Railroad Company, the plaintiff herein, as garnishee; on the fourteenth day of June 1895, judgment was rendered against The Wabash Railroad Company, garnishee defendant, in the sum of $81.98, and said judgment was not appealed from by said Peter Tourville, defendant, and now stands as a final adjudication of the claim of said Alexander Flannigan against said Peter Tourville, defendant, and The Wabash Railroad Company, the plaintiff herein, as garnishee defendant, in the State of Illinois, and that it has at no time been paid, *in whole or in part.* That an appeal from said judgment would not have availed said Wabash Railroad Company, the plaintiff herein, anything, for the reason that, under the laws of Illinois as declared by the decisions of its courts, this plaintiff was and is liable as garnishee in said suit.

7 The plaintiff further states that on the tenth day of June, in the year 1891, Peter Tourville, instituted a suit before a justice of the peace in the city of St. Louis, State of Missouri, against The Wabash Railroad Company, the plaintiff herein, as defendant, claiming the sum of $81.98, due him for wages earned in the service of said defendant; and that said suit was tried and appealed, and passed through various legal stages, finally resulting in a judgment against the defendant in said cause, the plaintiff herein, in the sum of $81.98, which judgment has recently been affirmed by the Supreme Court of the United States and has at no time been paid in whole or in part.

The plaintiff further states that since the institution of the first proceedings, either by Alexander Flannigan or Peter Tourville, it has at no time had in its possession more than $81.98, earned by said Peter Tourville; that the judgments of Peter Tourville and Alexander Flannigan, respectively, are both for the same sum of money in the plaintiff's hands and possession, with the *secured* interest thereon, on each judgment herein described respectively.

The plaintiff further states that both defendants in this cause of action, Alexander Flannigan and Virgil Rule, are each endeavoring to collect the sum of $81.98, and accrued interest, from the plaintiff, the said Wabash Railroad Company, and that the defendant, Virgil Rule is threatening to have an execution issued against the prop-

erty of said plaintiff in said cause, and that the said plaintiff does not know and cannot determine which of the defendants is entitled to the said sum of $81.98 and accrued interest which it holds and stands ready to pay. And that said plaintiff is in danger of having to pay twice, and that the said plaintiff has never been and is not now indemnified by either of said defendants, nor is said
8 plaintiff in collusion with either of said defendants, nor has the plaintiff any interest in said claims of said Virgil Rule or Alexander Flannigan to said fund, as hereinbefore set forth.

The plaintiff further states that the said defendant, Virgil Rule, is the assignee of the judgment of Peter Tourville against the Wabash Railroad Company, and that the said defendant appears as such in the margin of the record of the same.

Wherefore the plaintiff prays this honorable court, to be permitted to pay said sum of $81.98 and accrued interest, into this court, and that thereupon the plaintiff be relieved and discharged from all further liability on account thereof to said parties, or either of them, and be dismissed with its reasonable costs, etc. And that the said Alexander Flannigan and Virgil Rule be ordered to interplead and required to present their respective claims to said fund, and that the same may be determined and adjudicated by this court, and said money paid to the party entitled thereto.

May it please your honor to grant unto this plaintiff a process to be directed to the said defendants, Alexander Flannigan and Virgil Rule, commanding them, and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before your honor in this honorable court, then and there to answer all and singular the matters aforesaid, and to stand to, abide and perform such other orders and decrees therein as to your honor shall seem meet.

The plaintiff further prays this honorable court to grant and decree costs, and a reasonable allowance to plaintiff for attorney's fees, and any further remedies which to your honor may seem meet and just in the premises.

The plaintiff states that since the filing of the petition in this
9 cause, the defendant, Virgil Rule, has caused an execution to be issued in said cause, by Henry Troll, clerk of this court, and caused the same to be placed in the hands of Joseph Dieckman, sheriff of the city of St. Louis, State of Missouri, and at the instance of said defendant, Virgil Rule, the said sheriff is threatening to levy upon the property of said plaintiff under said execution, and that if said levy is made, the judgment in this cause will be rendered ineffectual.

Plaintiff further prays your honor to restrain said defendants, Virgil Rule, assignee of Peter Tourville aforesaid, and Alexander Flannigan, and each of them, from issuing or causing to be issued any execution or other process, in the courts of the 8th judicial circuit of Missouri, as well as from seizing or attempting to seize any part of said fund of $81.98, either in the plaintiff's hands prior to its payment into this court, or after said payment into said court,

and from levying or attempting to levy upon said fund, either in the plaintiff's hands prior to the payment thereof into this court, or afterwards, and to refrain from intermeddling with the said fund in any manner, until their respective claims to said fund have been adjudicated by this honorable court, or until further order of this court in the premises.

Wherefore plaintiff prays this honorable court to issue an order staying the levy upon said execution, and staying any further executions, or other process, except the interpleas to be filed by the defendant herein, as prayed for in this bill.

GEO. S. GROVER,
Attorney for Plaintiff, Interpleader.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Geo. S. Grover, being duly sworn, do say that I am attorney for the plaintiff in the above entitled cause; that I have read the foregoing third amended petition, and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

GEO. S. GROVER.

Subscribed and sworn to before me this fifth day of April, A. D. 1901.

B. S. WINSTON,
Notary Public, City of St. Louis, State of Missouri.

My commission expires Nov. 2nd, 1901.

That said petition was an amended petition filed in said entitled cause, then pending in division No. 4 of said circuit court.

That each and every allegation contained in said petition are true.

That thereafter at the April term of said court, the defendants in said suit, Alexander Flannigan and Virgil Rule, each in open court entered their voluntary appearance to said action and said Flannigan filed an answer admitting the allegations of said petition, and prayed that it might be adjudicated that said fund belonged to him.

The said Virgil Rule filed a demurrer to said petition.

That on the 15th day of April the judge of said division of said court made an order in said cause directing that the defendants Rule and Flannigan be required to show cause on the 19th day of April, 1901, why they should not be restrained from issuing or causing to be issued an execution or other process in the courts of the 8th judicial circuit of Missouri, as well as from seizing or attempting to seize any part of said fund of $81.98 and why they should not be further enjoined and restrained as prayed in said petition, and in the meantime so enjoined and restrained them.

That on the 19th day of April, the said Virgil Rule filed his return to said order to show cause, but said Flannigan made default.

That such proceedings were had in said cause, that on the 29th day of April, 1901 the said division of said circuit court in which said cause was pending without a hearing thereof, dismissed said cause and this plaintiff's bill of interpleader hereinbefore set out and refused to grant the injunction against defendants, Rule and Flannigan as prayed in said petition.

That thereafter on the 30th day of April, 1901, this plaintiff filed in said division of said court its motion for a new trial and rehearing, which was by said division of said court on the 6th day of May, 1901, overruled, to which action of the court this plaintiff then and there excepted.

That on the 13th day of May 1901 this plaintiff filed in said cause in said division of said court a supersedeas bond in principal sum of $1500.00 which bond was duly approved by said division of said court. Plaintiff says that it intends to prosecute said cause without delay, to a final judgment in said court of appeals.

Plaintiff further states that since the granting of said appeal of said cause to this court, the defendant, Virgil Rule, has caused an execution to be issued out of the office of the clerk of said circuit court, on the said judgment of which he is assignee, and placed the same in the hands of the defendant, Joseph Dickman, sheriff as aforesaid, with the direction to seize the property of this plaintiff for the purpose of satisfying the judgment on which said execution was issued.

That the said sheriff and the said Rule are now threatening
12 to levy upon the property of this plaintiff under said execution for the purpose of satisfying said judgment.

That the said Flannigan on the 5th day of April 1901, instituted in the circuit court of the city of St. Louis Missouri an action by attachment against said Peter Tourville and in said action, on the 5th day of April, 1901, caused this plaintiff to be summoned as a garnishee therein.

That said Flannigan is now threatening to proceed with said cause to final judgment against this plaintiff as garnishee and thereby procure a second judgment for said fund mentioned in said bill of interpleader hereinbefore set out.

Plaintiff further states that the said Tourville and Rule are insolvent, that the defendant, Flannigan is a non-resident of the State of Missouri, and that unless the said Rule and the said Sheriff Dickman and his deputies be enjoined and restrained from seizing or levying upon the property of this plaintiff and from further proceeding under said execution issued on said judgment of which Rule is assignee, and from making sale of property or doing any act whatsoever under or by virtue of said execution or any other execution issued on said judgment and unless the said Rule be restrained and enjoined from causing any other execution to be issued on said judgment, and that unless said Flannigan be restrained and enjoined from the further prosecution of said garnishment proceeding, pend-

ing the appeal of said bill of interpleader in this court, the judgment to be rendered in this court in said interpleader cause will thereby be rendered ineffectual, and that unless the parties defendant herein be restrained, as aforesaid, this plaintiff will have to pay the said sum twice and will suffer irreparable injury for which the law affords no adequate remedy, and will be subject to a multiplicity of vexatious suits.

13 Wherefore the plaintiff prays that by order and decree of this court the defendant Flannigan be enjoined and restrained from further prosecuting his garnishment proceedings against this plaintiff, and that said defendants, Rule and Sheriff Dickman and his deputies, by the order and decree of this court be enjoined and restrained from seizing and levying upon the property of this plaintiff, and from further proceeding under said execution, issued on said judgment of which defendant Rule is assignee and from making sale of property or doing any act whatsoever under and by virtue of said execution or any other execution issued on said judgment, and that the said Rule be, by the order and decree of this court, restrained and enjoined from causing any other execution to be issued on said judgment of which he is assignee and that Clerk Troll be, by the order and judgment of this court, restrained and enjoined from issuing any further executions on said judgment of which defendant Rule is assignee, until a final decision be made by this court of the said interpleader suit appealed to this court as aforesaid, and until said last mentioned cause is finally determined and until the further order of the court.

THE WABASH RAILROAD COMPANY,
By GEO. S. GROVER, *Its Attorney.*

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, George S. Grover, being duly sworn, do say that I am attorney for the plaintiff in the above entitled cause and make affidavit as such on behalf of said plaintiff; that I have read the foregoing petition and know the contents thereof and that the statements and allegations therein contained are true, as I verily believe.

GEO. S. GROVER.

Subscribed and sworn to before me this 27th day of May 1901. My term expires April 7, 1902.

JOHN ELSPERMANN, JR.,
Notary Public.

14 And afterwards on the same day, the following injunction bond was filed with the clerk of said court:

In the St. Louis Court of Appeals. In Vacation.

THE WABASH RAILROAD COMPANY, Interpleader,
vs.
VIRGIL RULE, ALEXANDER FLANNIGAN, and JOSEPH DIECKMANN, Sheriff of the City of St. Louis, Missouri, Defendants.

Know all men by these presents, that we, the Wabash Railroad Company as principal, and Henry C. Haarstick and Charles Parsons, as sureties, are held and firmly bound unto Virgil Rule, Alexander Flannigan, and Joseph Dieckmann, sheriff of the city of St. Louis, Missouri, and Henry Troll, circuit clerk of the city of St. Louis, Missouri, in the sum of fifteen hundred dollars ($1500.00) lawful money of the United States, to the payment of which, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns firmly by these presents.

The condition of the above obligation is such that whereas, upon the application of the above bounden The Wabash Railroad Company, the said St. Louis court of appeals, in vacation, has granted a temporary injunction or restraining order against said Virgil Rule, Alexander Flannigan, and Joseph Dieckmann, sheriff of the city of St. Louis, Missouri, as by the record of said court will fully appear:

Now therefore, if the Wabash Railroad Company shall and will abide the decision which shall be made in the cause wherein said injunction was granted, and pay all sums of money, damages and costs that shall be adjudged against it, if said injunction shall be dissolved, then this obligation shall be void; otherwise to remain in full force.

15 Witness our hands and seals this 23rd day of May, A. D. 1901.

THE WABASH RAILROAD COMPANY,
[SEAL.] By J. RAMSEY, JR.,
HENRY HAARSTICK.
CHARLES PARSONS.

Attest: E. B. CRYOR,
Ass't Secretary.

Whereupon the court on the same day ordered a temporary injunction as follows:

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

The State of Missouri to Alexander Flannigan, Virgil Rule, and Joseph Dieckman, Greeting:

Whereas the cause of The Wabash Railroad Company *vs.* Alexander Flannigan and Virgil Rule is now pending in the St. Louis court of appeals, by appeal from the circuit court of the city of St.

Louis and whereas the purpose and object of the said suit is to require the defendants Flannigan and Rule to interplead for a certain fund in the hands of the Wabash Railroad Company claimed by both said Flannigan and the said Rule and which the said Wabash Railroad Company offers to pay into court and whereas both said Rule and said Flannigan have recovered a several judgment against the said Wabash Railroad Company for said fund. And the said Rule has caused an execution to issue on his said judgment and has placed the same in the hands of Joseph Dieckman, sheriff of the city of St. Louis who as such sheriff has levied the same on the property of the said Wabash Railroad Company. And whereas the Wabash Railroad Company has duly *excepted* a good and sufficient stay bond to indemnify the said Rule and the said Flannigan against loss or damages, by reason of the
16 issuance of any order to stay the executions if the said judgments or either of them. And whereas the said Wabash Railroad Company, has presented to the undersigned judge of the St. Louis court of appeals in vacation of said court, its application for a stay of execution issued as aforesaid and to stay the issuance of any other or further execution on either of said judgments pending the aforesaid appeal and had here now executed its bond in the penal sum of fifteen hundred dollars with good and sufficient sureties to indemnify the said Flannigan and the said Rule against loss or damage on account of the stay of execution on the said judgments pending the said appeal—Now being willing that no injustice be done in the premises, it is by the undersigned judge of the St. Louis court of appeals, in vacation of said court, ordered that you, the said Flannigan and the said Rule and the said Dieckman and all other defendants named in the application for a stay of execution, be and you are hereby enjoined and restrained from issuing or levying any execution on either of the aforesaid judgments pending the appeal of the cause of The Wabash Railroad Company *vs.* Flannigan and Rule, and the said Joseph Dieckman, sheriff of the said city of St. Louis is hereby directed and required to immediately release and return the aforesaid property of the Wabash Railroad Company seized and levied upon by you by virtue of the execution issued in favor of the said Rule and against the Wabash Railroad Company and the — Alexander Flannigan, Virgil Rule and Joseph Dieckman, sheriff aforesaid hereof, fail not at your peril.

In witness whereof, I have hereunto set my hand and
[SEAL.] caused the seal of the St. Louis court of appeals to be affixed this 28th day of May, 1901.

C. C. BLAND,
P. Judge, St. Louis Court of Appeals.

17 And afterwards, to-wit, on the 13th day of August, 1901, the following abstract prepared by appellant was filed:

In the St. Louis Court of Appeals, October Term, A. D. 1901.

WABASH RAILROAD COMPANY (Interpleader), Appellant, v. ALEXANDER FLANNIGAN and VIRGIL Rule, Respondents.	No. 8267. Appeal from Circuit Court of the City of St. Louis, Hon. Wm. Zachritz, Presiding.

Abstract.

This was a bill of interpleader in which the appellant here and plaintiff below, a mere stakeholder, sought to pay a fund in its hands, in which there were two final judgments in different jurisdictions, into court, both of the judgment creditors having appeared and admitted the allegations contained in the bill. The court below denied the relief prayed for and dissolved the temporary injunction previously granted by it, without a hearing, from which order the defendant in due time perfected its appeal.

Petition.

On the 20th day of December, 1900, the plaintiff filed the following petition:

Now at this day comes The Wabash Railroad Company, the plaintiff in the above entitled cause of action, and says that it is a corporation, owning and operating a line of railroad in the
18 States of Missouri and Illinois; that it is duly organized under the laws of said States:

The plaintiff further states that at some time about or previous to the months of May and June, in the year 1891, it had in its employ one Peter Tourville. While in the employ of said plaintiff said Peter Tourville earned $81.98 more or less.

The plaintiff further states that on the first day of April, in the year 1895, Alexander Flannigan, one of the defendants above named, instituted an attachment proceeding against Peter Tourville before Justice of the Peace James H. Wyatt, of St. Clair county, Illinois. On said first day of April, 1895, writ was returned duly executed, by summoning the Wabash Railroad Company as garnishee; on the 14th day of June 1895, judgment was rendered against the said Wabash Railroad Company, garnishee, defendant, in the sum of $81.98, and said judgment was not appealed from by said Peter Tourville, defendant, and now stands as a final adjudication of the claim of said Alexander Flannigan against the said Peter Tourville, defendant, and The Wabash Railroad Company, garnishee, defendant, in the State of Illinois, and that it at no time has been paid, in whole or in part.

The plaintiff further states that on the 10th day of June, in the year 1891, Peter Tourville instituted a suit before a justice of the

peace in the city of St. Louis, State of Missouri, against The Wabadh Railroad Company, defendant, claiming the sum of $81.98 due him for wages earned in the service of said defendant; and that said suit was tried and appealed and passed through various legal stages, finally resulting in a judgment against the defendant in the sum of $81.98, which judgment has recently been affirmed by the Supreme Court of the United States and has at no time been paid, in whole or in part.

19 The plaintiff further states that both the defendants in this cause of action, Alexander Flannigan and Virgil Rule, are each endeavoring to collect the sum of $81.98 from the plaintiff, the said Wabash Railroad Company, and that the said plaintiff is in danger of having to pay twice; and that the said plaintiff has never been, and is not now, indemnified by either of said defendants, nor is said plaintiff in collusion with either of said defendants.

The plaintiff further states that the said defendant, Virgil Rule, is the assignee of the judgment of Peter Tourville against the Wabash Railroad Company, and that the said defendant appears in the margin of the record of the same.

Wherefore, the defendant prays this honorable court to be permitted to pay said sum of $81.98 into his court, and that thereupon the plaintiff be relieved and discharged from all further liability on account thereof, to said parties, or either of them, and be dismissed with its reasonable costs, etc. And that the said Alexander Flannigan and Virgil Rule be required to present their respective claims to said fund, and that the same may be determined and adjudicated by this court and said money paid to the party entitled thereto.

May it please your honor to grant unto this plaintiff a process to be directed to the said defendants, Alexander Flannigan and Virgil Rule, commanding them, and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before your honor in this honorable court, then and there to answer all and singular the matters aforesaid, and to stand to and abide and perform such other orders and decrees therein as — your honor shall seem meet.

The plaintiff further prays this honorable court to grant and decree costs and any further remedies which to your honor may seem meet and just in the premises.

20 *Service of Process.*

And upon said petition a writ of summons was issued against Alexander Flannigan and Virgil Rule, in which writ the sheriff made the following returns:

"Executed this writ in the city of St. Louis, this 21st day of December, 1900, by delivering a copy of the writ and petition as furnished by the clerk to Virgil Rule, defendant herein.

(Signed) JNO. H. POHLMAN, *Sheriff.*
GEO. W. AUTOR, *Deputy.*

"After due and diligent search, the within named defendant, Alexander Flannigan, cannot be found in the city of St. Louis, Missouri.

(Signed) JOS. DIECKMANN, *Sheriff.*
JOS. S. SCHILBIRG, *Deputy.*

Demurrer.

To which petition, on December 22, 1900, the defendant, Virgil Rule, filed the following demurrer:

Comes now the defendant, Virgil Rule, in the above entitled cause, and demurs to the petition, or bill of interpleader, filed by the plaintiff herein, for the following reasons, to-wit:

First. That the court has no jurisdiction over the defendant, Alexander Flannigan.

Second. Because there is another action pending between the same parties for the same cause in this State, to-wit, case No. 85,743, division No. 3 of this court, under the style of Peter Tourville *v.* The Wabash Railroad Company. In that case Peter Tourville obtained judgment of the plaintiff's interpleader, as set out in plain-
21 tiff's bill, and the amount of said judgment was for $81.00, but it is the same judgment referred to in said bill as having been assigned on the margin of the record to defendant Rule. The cause of action that is being litigated in that case are the claims of defendant Flannigan and said Tourville, the assignor of defendant Rule, to the funds now sought to be brought into court. And this defendant says that the right of his assignor to said funds as against defendant Flannigan, and therefore this defendant's right thereto, has been decided by the St. Louis court of appeals, the supreme court of the State of Missouri, and the Supreme Court of the United States; and the respective claims of the defendants herein will have been fully and finally determined and adjudicated as soon as the mandates of the two last named courts reach this court.

Third. Because the petition, or bill of interpleader, does not state facts sufficient to constitute a cause of action that is grounds for an interpleader against the defendant Virgil Rule.

Voluntary Appearance of Defendant Rule.

And thereafter, on the 5th day of February, 1901, defendant Flannigan filed the following voluntary appearance in said cause:

"I, Alexander Flannigan, do hereby enter my voluntary appearance in the above entitled cause, and hereby authorize Henry W. Blodgett, of the city of St. Louis, an attorney at law, to appear for and defend me and in all matters to act in the above entitled cause as my attorney."

Answer of Defendant Flannigan.

To which petition, on the 5th day of February, 1901, the defendant Flannigan, having entered his voluntary appearance in this cause by his attorney, and for his answer says: He admits each and every allegation set forth in the petition of the plaintiff.

22 Wherefore, this defendant says that under the facts stated in the petition he is entitled to said $81.98 mentioned therein, for which, with his costs, he prays judgment.

Second Amended Petition.

On the 20th day of February, 1901, the plaintiff filed the following amended petition:

Now this day comes The Wabash Railroad Company, the plaintiff in the above entitled cause of action, and says that it is a corporation, owning and operating a line of railroad in the States of Missouri and Illinois; that it is duly organized under the laws of the State of Ohio. And that in the State of Illinois it employs agents at its various stations within that State, which under the laws of that State are subject to have legal processes served upon them, which are directed against the plaintiff in this case, thereby serving personally this plaintiff with process.

The plaintiff further states that at some time about or previous to the months of May and June, in the year 1891, it had in its employ one Peter Tourville. While in the employ of said plaintiff said Peter Tourville earned $81.98, more or less.

The plaintiff further states that on the first day of April, in the year 1895, Alexander Flannigan, one of the defendants above named, instituted an attachment proceeding against Peter Tourville before James H. Wyatt, a justice of the peace for St. Clair county, Illinois, who had jurisdiction both of the subject matter and the person of the defendant, and garnisheed defendant in that cause under article 2, section 1, paragraph 16, of an act of the legislature of the State of Illinois, entitled "An act to revise the law in relation to justices of the peace and constables," approved June 26, 1895, in force July 1, 1895, which reads as follows:

"Justices of the peace shall have jurisdiction in their respective counties in the following cases, when the amount claimed does not exceed two hundred dollars: * * * In garnishment by attachment or summons, the amount of the claim of the garnishor, and not the amount of the answer of the garnishee shall determine the jurisdiction."

23 On said first day of April, 1895, writ was returned duly executed by summoning The Wabash Railroad Company as garnishee; on the fourteenth day of June, 1895, judgment was rendered against The Wabash Railroad Company, garnishee, defendant, in the sum of $81.98, and said judgment was not appealed from by

said Peter Tourville, defendant, and now stands as a final adjudication of the claim of said Alexander Flannigan against the said Peter Tourville, defendant, and The Wabash Railroad Company, garnishee, defendant, in the State of Illinois, and that it has at no time been paid *in whole or in part.*

The plaintiff further states that on the tenth day of June, in the year 1891, Peter Tourville instituted a suit before a justice of the peace in the city of St. Louis, State of Missouri, against The Wabash Railroad Company, defendant, claiming the sum of $81.98, due him for wages earned in the service of said defendant; and that said suit was tried and appealed, and passed through various legal stages, finally resulting in a judgment against the defendant *against the defendant* in the sum of $81.98, which judgment has recently been affirmed by the Supreme Court of the United States, and has at no time been paid in whole or in part.

The plaintiff further states that since the institution of the first proceedings, either by Alexander Flannigan or Peter Tourville, it has at no time had in its possession more than $81.98 earned by said Peter Tourville; that the judgments of said Peter Tourville and Alexander Flannigan, respectively, are both for the same sum of money in the plaintiff's hands and possession.

The plaintiff further states that both the defendants in this cause of action, Alexander Flannigan and Virgil Rule, are each endeavoring to collect the sum of $81.98 from the plaintiff, the said Wabash Railroad Company, and that the defendant Rule is threatening to have an execution issued against the property of said plaintiff in said cause, and that the said plaintiff does not know and
24 cannot determine which of the defendants is entitled to the said sum of $81.98, which it holds and stands ready to pay. And that said plaintiff is in danger of having to pay twice, and that the said plaintiff has never been and is not now indemnified by either of said defendants, nor is said plaintiff in collusion with either of said defendants, nor has the plaintiff any interest in the said claims of said Virgil Rule or Alexander Flannigan to said fund, as hereinbefore set forth.

The plaintiff further states that the said defendant Virgil Rule is the assignee of the judgment of Peter Tourville against the Wabash Railroad Company, and that the said defendant appears as such in the margin of the record of the same.

Wherefore, the plaintiff prays this honorable court to be permitted to pay said sum of $81.98 into this court, and that thereupon the plaintiff be relieved and discharged from all further liability on account thereof to said parties, or either of them, and be dismissed with its reasonable costs, etc. and that the said Alexander Flannigan and Virgil Rule be ordered to interplead and required to present their respective claims to said fund, and that the same may be determined and adjudicated by this court, and said money paid to the party entitled thereto.

May it please your honor to grant unto this plaintiff a process to be directed to said defendants, Virgil Rule and Alexander Flan-

nigan, commanding them, and each of them, at a certain time, and under a certain penalty therein to be named, to be and appear before your honor in this honorable court, then and there to answer all and singular the matters aforesaid, and to stand to, abide and perform such other orders and decrees therein as to your honor shall seem meet.

The plaintiff further prays this honorable court to grant and decree costs, and any further remedies which to your honor may seem meet and just in the premises.

25 The plaintiff further states that since the filing of the petition in this cause, the defendant Virgil Rule has caused an execution to be issued in said cause by Henry Troll, clerk of this court, and caused the same to be placed in the hands of Joseph Dieckmann, sheriff of the city of St. Louis, State of Missouri, and at the instance of said defendant Virgil Rule the said defendant sheriff is threatening to levy upon the property of said plaintiff under said execution, and that if said levy is made, the judgment in this cause will be rendered ineffectual.

Wherefore, plaintiff prays this honorable court to issue an order staying the levy upon said execution and *staying the levy upon said execution and* staying any further execution or other process, except the interpleas to be filed by the defendants herein, as prayed for in this bill.

Motion to Strike Out Filed by Defendant Rule.

On the 26th day of February, 1901, the defendant Rule filed the following motion to strike said amended petition from the files:

Now comes the defendant Virgil Rule, and as to the second amended petition in said cause, appearing for the purposes of this motion only, moves the court to strike said second amended petition from the files, for the reason that the plaintiff in said second amended petition is in law an individual, or legal entity, other and different from the plaintiff described in the original petition, and no process has been issued out of this court on behalf of the Wabash Railroad Company of the State of Ohio against the original defendants in this cause, and for the further reason that no process has been issued out of this court against defendant Joseph Dieckmann or Henry Troll, and that said parties are unnecessary parties to this suit.

26 *Leave to File Third Amended Petition.*

On the 15th day of April, 1901, the plaintiff was granted leave to file its third amended petition, and before the filing of same the defendant Virgil Rule filed the following objections thereto:

Defendant Virgil Rule, while not appearing to the third amended petition proposed to be filed herein, makes the following objections to the filing of said petition:

Because it appears upon the face of the petition that the plaintiff named in the third amended petition is a corporation and citizen of the State of Ohio, where in the original petition filed herein the plaintiff was not a corporation and citizen of the State of Ohio; and the filing of said petition in this cause is an attempt to bring this defendant into court without due process, and is contrary to the constitution of the State of Missouri and of the United States. Said third amended petition is as set out on pages 5–9 inclusive.

Temporary Injunction Granted.

The court then and there granted a temporary injunction as follows, to-wit:

The court having duly considered the plaintiff's application heretofore submitted for leave to file its third amended petition herein, as also the written objection thereto filed by defendant Rule, doth grant said plaintiff leave to file said third amended petition herein, which is accordingly done. And the court having read said third amended petition, which is duly verefied by affidavit, praying fro a restraining order herein, doth order that the said defendants be and appear in division No. four of this court at two o'clock in the afternoon on Friday, April 19, 1901, and show cause, if any they have, why a temporary injunction should not be issued herein, and the relief
27 prayed for in said third amended petition should not be granted.

And in the meantime, and until the further order of this court, upon plaintiff executing and filing an injunction bond in the sum of one thousand dollars, that then the defendants, and each of them, be and they are hereby restrained from levying or causing to be levied and from seizing or causing to be seized the property of plaintiff until the matters here in controversy can be fully adjudicated.

Injunction bond in the sum of one thousand dollars, with Charles Parsons and Logan Tompkins as sureties, approved and filed.

Return of Sheriff.

The sheriff thereafter filed his return to the order of the court to show cause contained in the court's order of April 12, 1901, in which it was recited that he had levied upon defendant's property pursuant to the execution duly issued in court room No. 3.

Second Petition Stricken Out.

On motion of defendant Virgil Rule, the court struck out plaintiff's second amended petition, to which ruling order and motion of the court the plaintiff then and there duly excepted and saved its exceptions.

Return of Defendant Rule.

And thereafter, on the 19th day of April, 1901, the defendant Rule filed the following return, to-wit:

Comes now Virgil Rule, one of the defendants named in the third amended petition filed herein, and without in anywise
28 appearing in said petition is so far as plaintiff therein named is a corporation of the State of Ohio, and appearing for the purposes of this return only, for his return to the order of this court to show cause, if any he has, on Friday, April 19, 1901, why a temporary injunction should not issue, a[illegible] the relief prayed for in this third amended petition should not be granted, and said injunction should not issue herein, and that the injunction in the restraining order should be dissolved for the following reasons, to-wit:

First. Because the bill does not state facts sufficient to constitute a cause of action for the equitable relief prayed for therein.

Second. Because there is another action pending between the same parties for the same cause of action in this State, in so far as the cause of action goes to enjoin the collection of the judgment in the case of Peter Tourville, plaintiff *vs.* Wabash Railroad Company, defendant, No. 85,743, room 3, of the circuit court of the city of St. Louis, Missouri, referred to by plaintiff in said third amended petition. That said cause of action is the case of Wabash Railroad Company, plaintiff, *vs.* Virgil Rule, assignee of Peter Tourville, defendant, the same being case No. 68, to the June term, 1901, of said court.

Third. Because payment of the judgment which was directed to be entered by the St. Louis court of appeals on March 26, 1896, in the case designated in the third amended petition, page —, as having been instituted June 10, 1891, would have been, in law, a full and complete defense to any liability on behalf of the plaintiff herein to the attachment suit of Alexander Flannigan against Peter Tourville, referred to on page — of the third amended petition as having been instituted April 1, 1895.

Fourth. Because in the case of Peter Tourville, plaintiff *vs.* The Wabash Railroad Company, defendant, referred to in said
29 third amended petition as having been instituted on the 10th day of June, 1891, the rights of said Peter Tourville (and, therefore, of his assignee) as against the judgment of Alexander Flannigan, referred to in said third amended petition, were fully and finally determined and adjudicated in this, to-wit: The St. Louis court of appeals on March 26, 1895, by its judgment and finding in said cause, directed the circuit court of the city of St. Louis to enter a judgment in said Tourville's favor in the sum of eighty-one dollars. And it appears from said third amended petition that thereafter, on or about April 1, 1895, said Alexander Flannigan instituted an attachment suit against said Tourville, and had the Wabash Railroad Company summoned as garnishee, and that thereafter said Flannigan obtained judgment in said cause against

the Wabash Railroad Company. This defendant says that the Wabash Railroad Company interposed said judgment as a bar and defense to the judgment *to the judgment* of said Tourville above set forth, and carried said cause to the supreme court of this State and of the United States, assigning as its reason therefor that the St. Louis circuit court had not given full faith and credit to the said judgment of Alexander Flannigan now set out in plaintiff's third amended bill of interpleader, and said appellate courts and the St. Louis circuit court fully and finally adjudicated the validity of said Tourville's judgment against that of said Flannigan.

Fifth. Because this court is wholly without jurisdiction to restrain the collection of the judgment of another court of competent jurisdiction, in the absence of any allegation of fraud in obtaining said judgment. Division No. 3 of the circuit court of the city of St. Louis has the exclusive right to control the judgment and execution set forth in said third amended petition and this court is without jurisdiction to interfere therewith.

Sixth. Because division No. 3 of the circuit court of the city of St. Louis, out of which the execution described in plaintiff's third amended petition issued, and in which the judgment on which said execution was based, was obtained, has the sole and exclusive right to control said judgment or to stay any execution thereon, and this court is wholly without jurisdiction to interfere with the judgment and execution of another court of competent jurisdiction.

Seventh. Because the respective demands of Peter Tourville and Alexander Flannigan against the Wabash Railroad Company have been known to plaintiff, as it appears from their third amended petition, since the month of June, 1891, and no effort was made by said company for a period of about ten years to bring said fund into court and have said parties interplead for the same.

Eighth. Because it appears from said third amended petition that the Wabash Railroad Company, with full knowledge of the respective demands of said Tourville and Flannigan, permitted said demands to ripen into judgments of cour*st* of competent jurisdiction without bring- said fund into court and having the respective claimants interplead therefor.

Ninth. Because the judgments of the St. Louis court of appeals, rendered on the 26th day of March, 1895, directing the St. Louis circuit court to enter a judgment in favor of Peter Tourville against the Wabash Railroad Company, was at all times a full and competent defense on behalf of the said Wabash Railroad Company, garnishee, to the suit of Alexander Flannigan against Peter Tourville, begun before James H. Wyatt, a justice of the peace of St. Clair county, Illinois, on April 1, 1895, but the Wabash Railroad Company neglected and failed to plead said judgment in bar to said suit of said Flannigan, and thus aided and assisted said Flannigan in obtaining a judgment against it, which he otherwise could not have obtained.

Tenth. Because — a suit instituted by Alexander Flannigan *v.* Peter

Tourville and The Wabash Railroad Company, garnishee, on
31 the 3rd day of June, 1891, before James H. Wyatt, a justice of the peace of St. Clair county, Illinois, said Flannigan obtained a judgment against the Wabash Railroad Company impounding the debt of eighty-one dollars due from said company to Tourville. That said judgment would have been a full and complete defence to the second *to the second* garnishment proceedings referred to in the third amended petition herein as having been begun before the same justice of the peace for the purpose of impounding the same fund on April 1, 1895, yet said company neglected and failed to interpose said judgment, and thus aided and assisted said Flannigan in obtaining a second judgment for the same fund in the same court which had previously been paid by said company to Flannigan under execution.

Eleventh. Because it appears from the third amended petition herein that the debts of Alexander Flannigan and Virgil Rule, assignee of Peter Tourville, *and* judgment debts of different jurisdictions, one of Illinois and the other of Missouri, and a judgment debt of one jurisdiction is not subject to an interpleader in another jurisdiction.

Twelfth. Because it is too late for the Wabash Railroad Company, after having fought the right of Peter Tourville to obtain a judgment against it in a court of law, to ask the intervention of a court of equity to prevent the collection of such judgment.

Thirteenth. Because the plaintiff named in the third amended petition, to-wit, The Wabash Railroad Company of Ohio, is a legal entity and corporation or citizen of the State of Ohio, and this defendant has not been brought into court or served with any process issued out of this court at the instance of said corporation, and the third amended petition filed herein is an attempt to bring this defendant into court at the instance of the Wabash Railroad
32 Company of Ohio without due process of law.

Fourteenth. Because it appears upon the face of the third amended petition that the Wabash Railroad Company has been guilty of laches in the bringing of this bill of interpleader, and, therefore, the same cannot be maintained.

Fifteenth. Because this court has no jurisdiction over defendant Flannigan, and could not enforce its decree against him.

Sixteenth. Because the third amended petition states no "legal wrong" within the meaning of the statute calling for equitable relief.

Seventeenth. Because plaintiff would have an adequate remedy at law in an action for damages against this defendant if the collection of the debt is unlawful.

Wherefore, defendant Rule prays that the injunction of said restraining order be dissolved; that this defendant be discharged with his costs; that this defendant be granted leave to file a motion to assess his damages on the injunction bond, and that the same be set down for hearing during this term of court.

Answer of Defendant Flannigan to Third Amended Petition.

And on the 22nd day of April, 1901, the defendant Flannigan filed the following answer to plaintiff's third amended petition, as follows:

"Now on this day comes the defendant Alexander Flannigan, having entered his voluntary appearance in this cause, by his attorney, for his answer to plaintiff's third amended petition says, he admits each and every allegation set forth in the petition of plaintiff.

Defendant further says that by virtue of said judgment of Peter Tourville against the Wabash Railroad Company to the use
33 of Alexander Flannigan, obtained in Illinois, as stated in plaintiff's third amended petition, this defendant thereby obtained a lien upon said sum of $81.98 prior in right to all liens, if any, upon said sum or sums, claimed by Peter Tourville or his assignee Virgil Rule, from the Wabash Railroad Company, and is therefore by virtue of said lien entitled to the payment of said sum from the Wabash Railroad Company.

Wherefore, this defendant, under the facts stated in the plaintiff's third amended petition and this defendant's amended answer, says that he is entitled to said sum of $81.98 mentioned, for which with his costs he prays judgment.

Motion for Relief Prayed for, Notwithstanding Return of Virgil Rule.

And on the 22nd day of April, 1901, plaintiff filed its motion for the relief prayed for, notwithstanding the return of Virgil Rule, as follows, to-wit:

"Now comes the plaintiff in the above entitled cause, by its solicitor, and moves the court here to continue its restraining order now in force, and to proceed with all convenient speed at its convenience to hear and determine the plaintiff's bill of interpleader therein filed, notwithstanding the return of Virgil Rule, defendant, filed in this cause April 19, 1901, for the following reasons, to-wit:

First. Because this court has full and complete jurisdiction over this matter.

Second. Because plaintiff is entitled to the relief here prayed for, notwithstanding said return.

Third. Because said return states no facts which would deprive the plaintiff of the relief prayed for.

34 *Fourth.* Because unless the relief here prayed for is granted to plaintiff, said defendants, Virgil Rule and Alexander Flannigan, will immediately proceed to defeat said bill of interpleader, by compelling the plaintiff, a mere stakeholder, to pay the sum twice out of the sum in plaintiff's hands.

Fifth. Because the plaintiff is entitled to the relief here prayed for, both at law and in equity, upon the facts stated in its third amended petition, and admitted in the return of said Virgil Rule."

Separate Answer of Defendant Flannigan.

And on the same day defendant Flannigan filed his separate answer, which is in words as follows:

Now this day comes the defendant Alexander Flannigan, having entered his voluntary appearance in this cause, by his attorney, to plaintiff's third amended petition, and says: He admits each and every allegation set forth in the petition of plaintiff.

Defendant further says that by virtue of said judgment of Peter Tourville against the Wabash Railroad Company, to the use of Alexander Flannigan, obtained in Illinois, as stated in plaintiff's third amended petition, this defendant thereby obtained a lien upon said sum of $81.98 prior in right to all liens, if any, upon said sum or sums claimed by Peter Tourville or his assignee, Virgil Rule, from the Wabash Railroad Company, and is, therefore, by virtue of said lien, entitled to the payment of said sum from the Wabash Railroad Company.

Wherefore, this defendant, under the facts stated in the plaintiff's third amended petition and this defendant's amended answer, says that he is entitled to said sum of $81.98 mentioned, for which, with his costs, he prays judgment.

35 *Relief Prayed for Denied and Injunction Dissolved.*

And thereafter, on the 29th day of April, the court having examined the third amended petition, the return of the defendant Virgil Rule, the answer of defendant Flannigan, and the motion of plaintiff for the relief prayed for, notwithstanding the return of Virgil Rule, and having duly considered the same, entered the following order:

"*Decision.*

MOND., *Ap'l* 29, 1901.

WABASH R. R. Co.
vs.
FLANNIGAN ET AL.

Prayer of bill denied. Order granting temporary injunction dissolved.

(Signed) W. ZACHRITZ."

Endorsed on back: 19159–A R. 4. Wabash R. R. Co. *vs.* Flannigan *et al.* Memo. of judge. Filed: April 29, 1901. Henry Troll, clerk.

Said order of court, as hereinbefore set forth, was thereupon endorsed upon the court files, as follows:

"April 29, 1901. Prayer of bill denied and temporary injunction dissolved."

And upon the clerk's minutes of said day the following entry appears, after stating the above entitled cause:

36 "Prayer of bill denied and temporary injunction dissolved."

Said order of court having been thereafter duly inscribed in the records of the office of the clerk of the circuit court of the city of St. Louis, Missouri, and plaintiff's exceptions saved to said order of court.

To the ruling and order of the court of April 29, 1901, as hereinbefore set forth, plaintiff, by counsel, then and there duly excepted and saved its exceptions.

Plaintiff's Motion for Rehearing Filed.

On the 30th day of April, 1901, in due time, the plaintiff filed its motion for rehearing, as follows:

Now comes the plaintiff and interpleader in the above entitled cause and moves the court here to set aside its order of April 29, 1901, and grant it a rehearing in said cause, for the following reasons, to-wit:

First. Because the interpleader is entitled in equity to the temporary injunction prayed for in its bill.

Second. Because the interpleader is entitled in equity to the relief prayed for in its bill.

Third. Because the plaintiff is entitled to maintain its bill of interpleader upon the facts stated in its petition, and plaintiff is further entitled to the relief prayed for in said bill.

Fourth. Because the court erred in denying the relief prayed for and in dismissing the plaintiff's bill.

Fifth. Because the court erred in dissolving the injunction previously granted by it in this cause.

Sixth. Because the court erred in dissolving the injunction in this case.

37 *Seventh.* Because the court erred in refusing to set down the interpleader for hearing.

Eighth. Because the court erred in denying the relief prayed for without a hearing.

Ninth. Because the court erred in refusing to allow the plaintiff to pay the fund into court, as prayed for in its bill.

Tenth. Because the court erred in refusing to require the defendants herein to interplead for the fund described in said bill, and in refusing to permit the plaintiff herein to deposit said fund into court.

Eleventh. Because the plaintiff is entitled to the relief prayed for in its bill of equity, upon the facts stated in its petition.

Twelfth. Because the court erred in denying to the plaintiff the relief prayed for in its bill, upon the facts stated in its petition.

Thirteenth. Because the court erred in permitting, as it did by dismissing the plaintiff's bill, and by dissolving the injunction, the

defendant Rule to collect the fund now in the plaintiff's hands, when said plaintiff is a mere stakeholder, and not interested in the conflicting claims of Virgil Rule and Alexander Flannigan to said fund.

Fourteenth. Because the effect of the court's ruling in this cause will be to compel the plaintiff, the interpleader herein, to pay Tourville's wages and his debt, too; or, in other words, pay the same debt twice.

Fifteenth. Because the court erred in refusing to give full faith and credit to the judgment of a sister State, as required by the Constitution and laws of the United States.

38 *Motion for Rehearing Overruled.*

At the same term of court, to-wit, on the 7th day of May, 1901, plaintiff's said motion for rehearing was overruled.

Exceptions Saved.

To which ruling, order and action of the court plaintiff then and there duly excepted and saved its exceptions.

Affidavit for Appeal Filed.

On the 13th day of May, 1901, the plaintiff filed its affidavit for an appeal.

Appeal Allowed.

On the 13th day of May, 1901, the appeal wad allowed to the plaintiff in said cause to the St. Louis court of appeals.

Appeal Bond Filed and Approved.

On the 13th day of May, 1901, plaintiff filed its appeal bond in the sum of $1,5000 with Wm. Nichols and M. M. Buck as sureties, which said bond was then and there by the court approved.

Leave to File Bill of Exceptions.

On the 13th day of May, 1901, by an order of court duly entered of record, the plaintiff was granted leave to file its bill of exceptions on or before June 3, 1901.

39 *Further Leave Granted to File Bill of Exceptions.*

Thereafter, on the 28th day of May, 1901, Hon. Wm. Zachritz, circuit judge, in open court, by order duly entered of record, granted leave to plaintiff to file its bill of exceptions in this cause on or before August 3, 1901.

Bill of Exceptions Filed.

On the 30th day of July, 1901, plaintiff presented its bill of exceptions to Hon. Wm. Zachritz, circuit judge and the same was signed, sealed and made a part of the record in said cause on said day.

Endorsement on Bill of Exceptions.

On the original bill of exceptions now on file in this cause appears the following endorsements:

"O. K." Henry W. Blodgett, attorney for Alexander Flannigan, defendant. Charles P. Johnson and J. D. Johnson with Virgil Rule for himself. July 27, 1901. Geo. S. Grover, attorney for appellant.

This is all of the appellant's abstract.

And afterwards, to-wit, on the 20th day of September, 1901, the respondent filed the following additional abstract, viz:

Additional Abstract of Record Prepared by Respondent Rule.

40 It is not true that both judgment creditors appeared and admitted the allegations in the bill, as stated on page — of appellant's abstract. There was one original and three so-called amended petitions, filed in this case.

First. In the original petition, set forth in appellant's abstract, beginning on page 2, filed December 20th, 1900, the plaintiff was alleged to be The Wabash Railroad Company, a corporation organized under the laws of the States of Missouri and Illinois. To this petition defendant Rule filed a demurrer, and this petition, together with the demurrer thereto, is still pending and undetermined, but another corporation has attempted to substitute itself as party plaintiff.

Second. On February 5th, 1901, the Wabash Railroad Company, a corporation, "duly organized under the laws of the State of Ohio," filed a so-called amended (in fact substituted) petition (Rec. 166, page 585), but no process was ever issued out of the circuit court on behalf of said corporation. This petition was voluntarily abandoned by the filing of a second amended (in fact substituted) petition.

Third. The second substituted petition was filed February 20th, 1901 (Rec. 166, p. 604) and the plaintiff in that petition was again the Ohio corporation, and no process was ever issued out of the circuit court on behalf of that corporation. To that petition also were added additional defendants, to-wit: Joseph Dieckmann, sheriff of the city of St. Louis, and Henry Troll, clerk of the circuit court of the city of St. Louis, but no process was ever served upon them. This petition was also voluntarily abandoned by the filing of a third substituted petition.

Fourth. The third substituted petition was filed April 15th, 1901, (Rec. 173, p. 32) by the Ohio corporation. Defendant Virgil Rule never entered his appearance to any of the petitions filed by the Ohio corporation, and no process was ever issued or served upon him at the instance of that corporation.

41 The demurrer filed by defendant Rule to the petition filed by the original plaintiff speaks for itself. Defendant Rule has not appeared and admitted the allegations of any of the petitions filed by the substituted plaintiff, to-wit, the Ohio corporation. On the contrary, defendant Rule has filed a motion to strike out each of the petitions filed by the Ohio corporation, each of which said motions begins by the recital of the fact, that said Rule does in no wise appear to the substituted petition therein filed, but for the purposes of the motion to strike out, only. The motion to strike out the first amended petition, or substituted petition was filed April 12th, 1901, and sustained on the same day (Rec. 173, p. 34). The motion to strike out the second amended petition (substitute) petition was filed February 26th, 1901, (Rec. 166, p. 610) and sustained April 1st, 1901. (Rec. 173, p. 8). The motion to strike out the third amended (substituted) petition from the files was filed April 29th, 1901. (Rec. 173, p. 55). This motion was still pending and undetermined at the time the appeal was taken in this case and has not as yet been passed upon.

On page 18 of appellant's abstract the recital as to the return of the sheriff to the order to show cause, is untrue. The return of the sheriff on that order is as follows. "Served this order of court in the city of St. Louis, this 15th day of April, 1901, by delivering a copy of the same to the within named Virgil Rule.

(Signed) JOSEPH DIECKMANN, *Sheriff*,
By JOSEPH F. SHILLING, *Deputy*.

After due and diligent search the within named defendant Alexander Flannigan cannot be found in the city of St. Louis, Mo.

JOSEPH F. DIECKMANN, *Sheriff*,
By JOSEPH F. SCHILLING, *Deputy*."

42 The return of the sheriff on the original writ, sued out by the Missouri and Illinois corporation was that Alexander Flannigan could not be found in the city of St. Louis.

On page 35 of appellant's abstract there was no such order as set out in the abstract. On that day, April 29th, the order to show cause, issued on April 15th, having previously been heard and taken under advisement the court passed upon it, and the appellant has attempted to convert a mere memorandum made by the judge into an order of the court. This memorandum was not filed as shown in appellant's abstract, nor was it signed by the judge, as is shown in appellant's abstract.

The facts are: On August 2nd, 1901, three days after the bill of exceptions in this case had been filed, Mr. Grover, attorney for appellant, took this memorandum to the judge and requested him to sign his name thereto, and to date it April 29th, 1901. This date and this signature as above stated was put on the memorandum on August 2nd, 1901; also the endorsement on the back of the paper was, at the request of Mr. Grover, put on the memorandum on August 2nd, 1901. There is no record entry of the filing of this memorandum, and the same was never filed as an order or anything else in this case. The record entry of that day, omitting caption, is as follows (Rec. 173, p. 54), to-wit:

MONDAY, *April 29th*, 1901.

Now at this day comes the parties hereto by their respective attorneys, and the order issued herein on April 15th, 1901, commanding the defendants to show cause why a temporary injunction should not be granted against them, coming on for hearing upon the pleadings, affidavits and proofs adduced, and the court having duly considered the same, and now being sufficiently advised of and concerning the premises, doth consider that the prayer of plaintiff's bill is and be denied. It is further ordered by the court that the restraining order granted against defendants on April 15th, 1901, be
43 and is hereby dissolved."

Appellant's abstract (pages 32-33 this record) also omits the last page of the return of defendant Rule to the order to show cause, which page is as follows:

STATE OF MISSOURI, } ss:
City of St. Louis, }

I Virgil Rule, being duly sworn, do say that I have read over the foregoing return, and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

VIRGIL RULE.

Subscribed and sworn to before me this 19th day of April, A. D. 1901.

HENRY TROLL,
Clerk of the Circuit Court, City of St. Louis, Mo.

Appellant's abstract also omits to state that the order of April 15th, 1901, to show cause, was not served on defendant Flannigan and could not be served upon him by reason of his being a non-resident of the State of Missouri. This act, however, is shown by the return of the sheriff set forth in this abstract.

Appellant's abstract also omits to state that defendant Flannigan never made a return to the order to show cause.

On page 18 of appellant's statement and brief (p. 27 of this transcript) there is a recital that plaintiff, on February 5th, 1901, *refiled* its original petition, with some necessary amendments thereto, relating to certain changes in the situation. The fact is that there had been no changes in the situation at that time, and the plaintiff
44 in the original bill did not *refile* the original bill. The substituted bill filed by the substituted plaintiff is as follows (the changes therein made being printed in italics, and the record entry of the filing of said petition is "Amended petition filed" (Rec. 166, p. 585), to-wit:

Amended Petition.

Now this day comes The Wabash Railroad Company, the plaintiff in the above entitled cause of action, and says, that it is a corporation, owning and operating a line of railroad in the States of Missouri and Illinois; that it is duly organized under the laws of *Ohio*. (In the original petition the wording was, "said States, to-wit: Missouri and Illinois") *And that in the State of Illinois it employs agents at its various stations within that State which, under the laws of this State, are subject to have legal processes served upon them, which are directed against the plaintiff in this cause, thereby serving personally this plaintiff with process.*

The plaintiff further states that, at some time, about or previous to the months of May and June, in the year 1891, it had in its employ one Peter Tourville. While in the employ of said plaintiff, said Peter Tourville earned $81.98 more or less.

The plaintiff further states that on the first day of April, in the year 1895, Alexander Flannigan, one of the defendants above named, instituted an attachment proceeding against Peter Tourville, before James H. Wyatt, a justice of the peace of St. Clair county, Illinois, *who had jurisdiction both of the subject matter and the person of the defendant, and garnishee defendant in that cause, under article two, section one, paragraph sixteen of an act of the legislature of the State of Illinois, entitled "An act to revise the law in relation to justices of the peace and constables," approved June 26th, 1895, in force July 1st, 1895, which reads as follows:*

45 *Justices of the peace shall have jurisdiction in their respective counties in the following cases, where the amount claimed does not exceed two hundred dollars. * * * In garnishment by attachment or summons, the amount of the claim of the garnishor and not the amount of the answer in the garnishee, shall determine the jurisdiction."*

On the first day of April, 1895, writ was returned duly executed,

by summoning the Wabash Railroad Company as garnishee; on the fourteenth day of June, 1895, judgment was rendered against the said Wabash Railroad Company, garnishee defendant, in the sum of $81.98, and said judgment was not appealed from by said Peter Tourville, defendant, and now stands as a final adjudication of the claim of said Alexander Flannigan against the said Peter Tourville, defendant, and The Wabash Railroad Company, garnishee defendant, in the State of Illinois, and that it has at no time been paid, in whole or in part.

The plaintiff further states that on the tenth day of June, in the year 1891, Peter Tourvill instituted a suit before a justice of the peace in the city of St. Louis, State of Missouri, against The Wabash Railroad Company, defendant, claiming the sum of 81.98 due him for wages earned in the service of said defendant, and that said suit was tried and appealed and passed through various legal stages, finally resulting in a judgment against the defendant in the sum of $81.98, which judgment has recently been affirmed by the Supreme Court of the United States, and has at no time been paid in whole or in part.

The plaintiff further states that since the institution of the first proceedings, either by Alexander Flannigan or Peter Tourville, it has at no time had in its possession more than $81.98 earned by said Peter Tourville; that the judgments of Peter Tourville and Alexander Flannigan, respectively, are both for the same sum of money in the plaintiff's hands and possession.

46 The plaintiff further states that both defendants in this cause of action, Alexander Flannigan and Virgil Rule, are each endeavoring to collect the sum of *of* $81.98 from the plaintiff the said Wabash Railroad Company, and that the said plaintiff does not know and cannot determine which of the defendants is entitled to the said sum of $81.98, which it hold and stands ready to pay. And that said plaintiff is in danger of having to pay twice, and that the said plaintiff has never been and is not now indemnified by either of said defendants, nor is said plaintiff in collusion with either of said defendants.

The plaintiff further states that the said defendant Virgil Rule, is the assignee of the judgment of Peter Tourville against the Wabash Railroad Company, and that the said defendant appears as such in the margin of the record of the same.

Wherefore the plaintiff prays this honorable court to be permitted to pay the said sum of $81.98 into this court, and that thereupon the plaintiff be relieved and discharged from all further liability on account thereof to said parties, or either of them, and be dismissed with its reasonable costs, etc. And that the said Alexander Flannigan and Virgil Rule *be ordered to interplead and* required to present their respective claims to said fund, and that the same may be determined and adjudicated by this court, and said money paid to the party entitled thereto.

May it please your honor to grant unto this plaintiff a process to be directed to the said defendants, Alexander Flannigan and Virgil

Rule, commanding them, and each of them, at a certain time, and under a certain penalty therein to be named, to be and appear before your honor in this honorable court, then and there to answer all and singular the matters aforesaid, and to stand to, abide and perform such other orders and decrees therein as — your honor shall seem meet.

The plaintiff further prays this honorable court to grant and decree costs and any further remedies which to your honor may seem meet and just in the premises."

CHARLES P. JOHNSON AND
JOHN D. JOHNSON,
Attorneys for Respondent Rule.

47 And afterwards, to-wit, on the 5th day of October, 1901, the following motion to dissolve the injunction was filed by defendant Rule:

In the St. Louis Court of Appeals, October Term, 1901.

WABASH RAILROAD COMPANY, Appellant,
vs.
ALEXANDER FLANNIGAN and VIRGIL RULE, Respondents. } No. 8267.

Motion to Dissolve Injunction.

Comes now the respondent in the above entitled cause, Virgil Rule, and moves the court to dissolve the injunction granted herein by the Hon. C. C. Bland on the 28th day of May, 1901, for the following reasons, to wit:

First. Because this court is wholly without jurisdiction in said cause.

Second. Because this court is wholly without jurisdiction over and absolutely without power of enforcing its judgment against the respondent Flannigan, a resident and citizen of the State of Illinois.

Third. Because the injunction issued against defendant Rule is to stay an execution upon a judgment rendered in accordance with the mandate of this court upon a decision rendered on the 25th day of March, 1895, and this cause is not an appeal from said judgment.

Fourth. Because this court has no jurisdiction over original proceedings for an injunction and this is an original proceeding bringing in new parties and enjoining an execution on a judgment not appealed from.

48 Fifth. Because this court is without jurisdiction, except upon an appeal from the refusal of division No. 3 of the circuit court of the city of St. Louis (the court out of which the execution issued) to grant a stay of its execution.

Sixth. Because the appellant's bill does not state facts sufficient

to constitute a cause of action for the equitable relief prayed for therein.

Seventh. Because at the time of the filing of appellant's bill there was another action pending between the same parties for the same cause of action in this State, in so far as the cause of action goes to enjoining the collection of the judgment in the case of Peter Tourville, plaintiff, *vs.* Wabash Railroad Company, defendant, No. 85,743, room 3 of the circuit court of the city of St. Louis, Missouri, referred to by plaintiff in said third amended petition. That said cause of action is the case of The Wabash Railroad Company, plaintiff, *vs.* Virgil Rule, assignee of Peter Tourville, defendant, the same being case No. 68 to the June term 1901, of said court.

Eighth. Because the payment of the judgment which was directed to be entered by the St. Louis court of appeals on March 26th, 1895, in the case designated in the third amended petition, page 2, as having been instituted June 10, 1891, would have been, in law, a full and complete defense to any liability on behalf of the plaintiff herein to the attachment suit of Alexander Flannigan against Peter Tourville, referred to on page 2 of said third amended petition as having been instituted April 1, 1895.

Ninth. Because in the case of Peter Tourville, plaintiff, *vs.* The Wabash Railroad Company, defendant, referred to in said third amended petition as having been instituted on the 10th day of June, 1891, the rights of said Peter Tourville (and, therefore, of his assignee) as against the judgment of Alexander Flannigan, re-
49 ferred to in said third amended petition, were fully and finally determined and adjudicated in this, to wit, the St. Louis court of appeals on March 26, 1895, by its judgment and finding in said cause directed the circuit court of the city of St. Louis to enter a judgment in said Tourville's favor in the sum of eighty-one dollars. And it appears from said third amended petition that thereafter, on or about April 1, 1895, said Alexander Flannigan instituted an attachment suit against said Peter Tourville, and had the Wabash Railroad Company summoned as garnishee, and that thereafter said Flannigan obtained judgment in said cause against the Wabash Railroad Company. This defendant says that the Wabash Railroad Company interposed said judgment as a bar and defense to the judgment of said Tourville above set forth, and carried said cause to the supreme court of this State and of the United States, assigning as its reason therefor that the St. Louis circuit court had not given full faith and credit to the said judgment of Alexander Flannigan now set out in plaintiff's third amended bill of interpleader, and said appellate courts and the St. Louis circuit court fully and finally adjudicated the validity of said Tourville's judgment as against that of said Flannigan.

Tenth. Because this court is wholly without jurisdiction to restrain the collection of the judgment of another court of competent jurisdiction, in the absence of any allegation of fraud in obtaining said judgment. Division No. 3 of the circuit court of the city of St. Louis has the exclusive right to control the judgment and execution

set forth in said third amended petition, and this court is without jurisdiction to interfere therewith.

Eleventh. Because division No. 3 of the circuit court of the city of St. Louis, out of which the execution described in plaintiff's third amended petition issued, and in which the judgment on which said execution was based was obtained, has the sole and exclusive right to control said judgment or to stay any execution thereon, and
50 this court is wholly without jurisdiction to interfere with the judgment and execution of another court of competent jurisdiction.

Twelfth. Because the respective demands of Peter Tourville and Alexander Flannigan against the Wabash Railroad Company have been known to plaintiff, as it appears from their third amended petition, since the month of June, 1891, and no effort was made by said company for a period of about ten years to bring said fund into court and have said parties interplead for the same.

Thirteenth. Because it appears from said third amended petition that the Wabash Railroad Company, with full knowledge of the respective demands of said Tourville and Flannigan, permitted said demands to ripen into judgments of courts of competent jurisdiction without bringing said fund into court and having the respective claimants interplead therefor.

Fourteenth. Because the judgment of St. Louis court of appeals, rendered on the 26th day of March, 1895, directing the St. Louis circuit court to enter a judgment in favor of Peter Tourville against the Wabash Railroad Company, was at all times a full and competent defense on behalf of The Wabash Railroad Company, garnishee, to the suit of Alexander Flannigan against Peter Tourville begun before James H. Wyatt, a justice of the peace of St. Clair county, Illinois, on April 1, 1895, but the Wabash Railroad Company neglected and failed to plead said judgment in bar to said suit of said Flannigan, and thus aided and assisted said Flannigan in obtaining a judgment against it, which he otherwise could not have obtained.

Fifteenth. Because in a suit instituted by Alexander Flannigan *v.* Peter Tourville and The Wabash Railroad Company, garnishee; on the 3rd day of June, 1891, before James H. Wyatt, a
51 justice of the peace of St. Clair county, Illinois, said Flannigan obtained a judgment against the Wabash Railroad Company impounding the debt of eighty-one dollars due from said company to said Tourville. That said judgment would have been full and complete defense to the second garnishment proceedings referred to in the third amended petition herein as having been begun before the same justice of the peace for the purpose of impounding the same fund on April 1, 1895, yet said company neglected and failed to interpose said judgment, and thus aided and assisted said Flannigan in obtaining a second judgment for the same fund in the same court which had been previously paid by said company to Flannigan under execution.

Sixteenth. Because it appears from the third amended petition herein that the debts of Alexander Flannigan and of Virgil Rule,

assignee of Peter Tourville, are judgment debts of different jurisdictions, one of Illinois, the other of Missouri, and a judgment debt of one jurisdiction is not subject to an interpleader in another jurisdiction.

Seventeenth. Because it is too late for the Wabash Railroad Company, after having fought the right of Peter Tourville to obtain a judgment against it in a court of law, to ask the intervention of a court of equity to prevent the collection of such judgment.

Eighteenth. Because the plaintiff named in the third amended petition, to-wit, The Wabash Railroad Company of Ohio, is a legal entity and corporation or citizen of the State of Ohio, and this defendant has not been brought into court or served with any process issued out of this court at the instance of said corporation, and the third amended petition filed herein is an attempt to bring this defendant into court at the instance of the Wabash Railroad Company of Ohio without due process of law.

Nineteenth. Because it appears upon the face of the third amended petition that the Wabash Railroad Company has been guilty of laches in the bringing of this bill of interpleader, and there-

52 fore the same cannot be maintained.

Twentieth. Because this court has no jurisdiction over defendant Flannigan, and could not enforce its decree against him.

Twenty-first. Because the third amended petition states no "legal wrong" within the meaning of the statute calling for equitable relief.

Twenty-second. Because plaintiff would have an adequate remedy at law in an action for damages against this defendant if the collection of the debt is unlawful.

Wherefore, the respondent, Virgil Rule, prays that the injunction issued by the Hon. C. C. Bland out of this court in vacation on the 28th day of May, 1901, be dissolved, and that defendant Rule be allowed the costs of printing the additional abstract filed herein.

CHARLES P. JOHNSON,
J. D. JOHNSON,
Attorneys for Respondent Rule.

53 And afterwards, to-wit, on the 16th day of October, 1901, the following among other proceedings were had:

WABASH RAILROAD COMPANY, Appellant,
v.
ALEXANDER FLANNIGAN ET AL., Respondents.
} Appeal from Circuit Court, City of St. Louis.

Now at this day come the said parties by their respective attorneys and after argument herein, submit this cause to the court.

And afterwards, to-wit, on the 17th day of December, the following judgment was entered in this cause:

WABASH RAILROAD COMPANY, Appellant, v. ALEXANDER FLANNIGAN ET AL., Respondents. } Appeal from Circuit Court, City of St. Louis.

Now again come the said parties by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said circuit court of the city of St. Louis be in all things affirmed and stand in full force and effect; and that said respondent- recover of said appellant their costs and charges herein expended and have execution therefor. Opinion filed.

54 *And afterwards*, to-wit, on the 4th day of February, 1902, the following further order was made in said cause:

WABASH RAILROAD COMPANY, Appellant, v. ALEXANDER FLANNIGAN ET AL., Respondents. } Appeal from Circuit Court, City of St. Louis.

Now at this day, the court having fully considered appellant's motion for a rehearing, doth order and adjudge that the said motion be sustained and the judgment of affirmance heretofore entered, set aside, and the cause continued to the March term, 1902, of this court for hearing.

And afterwards, to-wit, on the 13th day of May, 1902, the following judgment was entered:

WABASH RAILROAD COMPANY, Appellant, v. ALEXANDER FLANNIGAN ET AL., Respondents. } Appeal from Circuit Court, City of St. Louis.

Now again come the said parties by their respective attorneys and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment of the circuit court of the city of St. Louis be in all things affirmed and stand in full force and effect; that said respondents recover of said appellant their costs and charges herein expended and have execution therefor. Opinion filed.

And afterwards, to-wit, on the 13th day of May, 1902, the following motion to transfer the cause to the supreme court of Missouri was filed:

55 In the St. Louis Court of Appeals, March Term, 1902.

WABASH RAILROAD COMPANY, Appellant, } Appeal from Circuit
v. } Court of the City
ALEXANDER FLANNIGAN ET AL., Respondents. } of St. Louis.

Now comes the appellant in the above entitled cause, and states to the court that said cause involves a construction of section one of article four of the Constitution of the United States.

Wherefore, appellant prays this honorable court to transfer this cause to the supreme court of Missouri, in accordance with section twelve, article twelve, of the constitution of Missouri.

GEO. S. GROVER,
Attorney for Appellant.

And afterwards, on the 10th day of June, 1901, the following judgment was entered in said cause:

WABASH RAILROAD COMPANY, Appellant, } Appeal from Circuit
v. } Court, City of St.
ALEXANDER FLANNIGAN ET AL., Respondents. } Louis.

Now at this day the court having fully considered the appellant's motion for a rehearing and to transfer this cause to the supreme court of this State and also respondent's motion to tax costs of printing additional abstracts of the record, doth order and adjudgr that said motions be overruled. It is now further considered and adjudged by the court that the judgment of this court rendered herein on the 13th day of May, 1902, be so modified as to read as follows:

56 Now again come the said parties by their respective attorneys and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said circuit court of the city of St. Louis be in all things affirmed and stand in full force and effect; whereupon it is further considered and adjudged by the court that the temporary restraining order heretofore made by this court on the — day of —— 190– be and the same is hereby dissolved and for naught held and esteemed and that the above named defendants as well as Joseph Dieckmann, sheriff of the city of St. Louis, Missouri, and Henry Troll, circuit clerk of the city of St. Louis, Missouri, who were included in said temporary restraining order, be dismissed and discharged of and from the premises, so charged upon them by said temporary restraining order and that they depart and go hence without day in that behalf; and also that said respondents recover of said appellant their costs and charges herein expended and have execution therefor. Opinion filed.

To which action of the court in overruling said motions the appellant excepted and still excepts.

And afterwards, on the same day, the following opinion was filed:

57 In the St. Louis Court of Appeals, March Term, 1902.

THE WABASH RAILROAD COMPANY (Interpleader), Appellant,
v.
ALEXANDER FLANNIGAN ET AL., Respondents.

No. 8267. Appeal from Circuit Court, City of St. Louis.

Opinion.

Plaintiff by its third amended petition averred that plaintiff was first organized as a railroad corporation under the laws of the State of Ohio, and subsequently organized under the laws of the States of Illinois and Missouri; that on the first day of August, 1889, and ever since it has been continuously and without change a consolidated corporation; that in the months of May and June, 1891, defendant Tourville, earned as an employé of plaintiff, eighty-one dollars and ninety-eight cents more or less; that defendant Flannigan, in April, 1895, instituted an attachment proceeding against Tourville before James H. Wyatt, a justice of the peace for St. Clair county, Illinois, who had jurisdiction both of the subject matter and person of defendant Tourville and garnished the plaintiff in the cause, and that on June 14, 1895, judgment was rendered by said justice in said cause against Tourville and the plaintiff as garnishee for eighty-one dollars and ninety-eight cents, and that said
58 judgment was not appealed from and remains in full force and effect, no part of it having been paid by Tourville or the Wabash Railway Company; and that an appeal by the Wabash Railway Company as garnishee would have been wholly unavailing under the laws of Illinois as there in force; that on the tenth day of June, 1891, Tourville instituted a suit before a justice of the peace in the city of St. Louis, State of Missouri, against the Wabash Railroad Company, claiming the sum of eighty-one dollars and ninety-eight cents due him for wages earned in the service of said railway company and that said suit was tried and passed through various courts of this State by appeal, resulting in a judgment of eighty-one dollars and ninety-eight cents, which was finally affirmed by the Supreme Court of the United States; that both judgments are for the same sum of money and that plaintiff never owed Tourville but the one sum of eighty-one dollars and ninety-eight cents; that Tourville has assigned his judgment to defendant, Virgil Rule, and that Flannigan and Rule were each undertaking to collect his several judgment, and that plaintiff is in danger of having to twice pay the sum of eighty-one dollars and ninety-eight cents, and alleges that it is ready and willing to pay the said sum with interest to the party to whom it is due, but that it is unable to determine or to know whether the said sum and interest should be paid to Flannigan or to

Tourville and Rule and prays that they be directed to come into court and interplea for said moneys.

A temporary restraining order was issued, to which defendant Rule made return assigning seventeen reasons why plaintiff should not maintain its bill and asked that the restraining order be
59 dissolved.

On the twenty-second day of April, 1901, plaintiff filed its motion for the relief prayed for, notwithstanding the return of defendant Rule, as follows:

"Now comes the plaintiff in the above entitled cause, by its solicitor, and moves the court here to continue its restraining order now in force, and to proceed with all convenient speed at its convenience to hear and determine the plaintiff's bill of interpleader therein filed, notwithstanding the return of Virgil Rule, defendant, filed in this cause April 19, 1901, for the following reasons, to-wit:

"*First.* Because this court has full and complete jurisdiction over this matter.

"*Second.* Because plaintiff is entitled to the relief here prayed for, notwithstanding said return.

"*Third.* Because said return states no facts which would deprive the plaintiff of the relief prayed for.

"*Fourth.* Because unless the relief here prayed for is granted to plaintiff, said defendants, Virgil Rule and Alexander Flannigan, will immediately proceed to defeat said bill of interpleader, by compelling the plaintiff, a mere stakeholder, to pay the sum twice out of the sum in plaintiff's hands.

"*Fifth.* Because the plaintiff is entitled to the relief here prayed for, both at law and in equity, upon the facts stated in its third amended petition, and admitted in the return of said Virgil Rule."

On the same day defendant Flannigan, filed the following separate answer, to-wit:

"Now this day comes the defendant Alexander Flannigan, having entered his voluntary appearance in this cause, by his attorney, to plaintiff's third amended petition, and says: He admits each and every allegation set forth in the petition of the plaintiff.

"Defendant further says that by virtue of said judgment of Peter Tourville against The Wabash Railroad Company, to the use of Alexander Flannigan, obtained in Illinois, as stated in plaintiff's third amended petition, this defendant thereby obtained a lien upon said sum of $81.98 prior in right to all liens, if any, upon said sum or sums claimed by Peter Tourville or his assignee, Virgil Rule, from the Wabash Railroad Company, and is, therefore, by virtue of said lien, entitled to the payment of said sum from the Wabash Railroad Company.

Wherefore, this defendant, under the facts stated in the
60 plaintiff's third amended petition and this defendant's amended answer, says that he is entitled to said sum of $81.98 mentioned, for which, with his costs, he prays judgment."

On April 29, 1901, the court dissolved the temporary injunction and entered judgment against plaintiff, denying the relief prayed

for. After an unsuccessful motion for new trial, plaintiff appealed. After the appeal was perfected, the plaintiff obtained in vacation an order from one of the judges of this court, restraining the collection of an execution, which defendant Rule had sued out on the Tourville judgment. A motion to dissolve this restraining order has been filed in this court.

Counsel for appellant has incorporated in his statement and brief a history of its litigation with Tourville and Flannigan. This history, while interesting as history, has no place in the record beyond what is set forth in the bill for an interpleader and what appears in the opinions of the appellate courts of this State, to which the Tourville case was taken by successive appeals.

From the bill for an interpleader it appears that Tourville began a suit against the appellant on June 10, 1891, before a justice of the peace and from the court reports it appears that on March 26, 1895, this judgment was made final by the decision and mandate of the St. Louis court of appeals (61 Mo. App. 534, S. C. 148 Mo. L. C. 624).

The bill for an interpleader alleges that Flannigan begun his suit by attachment in the State of Illinois and garnished the appellant on June 14, 1895, so that it affirmatively appears when the Flannigan suit was commenced Tourville had reduced his claim to a final judgment and that his cause of action was merged or
61 drowned in the judgment. Cooksey *v.* Railroad, 74 Mo. 477; Freeman on Judgments, (4 ed.) sec. 215. At the time Flannigan commenced his suit the old debt had ceased to exist and was not thereafter the subject of garnishment under the laws of this State. Drake on Attachments, (7 ed.) 622; Tourville *v.* Wabash R. R. Co., 148 Mo. 624. But it appears that a different rule prevails in the State of Illinois and that an indebtedness upon which a judgment has been rendered is the subject of garnishment, Minard *v.* Lawler, 26 Ill. 301; Luton *v.* Hoehn, 72 Ill. 81; Allen *v.* Watt, 79 Ill. 284, and that this may be done even where the judgment was rendered by one court and the garnishment proceedings were in another and inferior court. Luton *v.* Hoehn, *supra.*

In Allen *v.* Watt, *supra*, it was held that where a debt has been recovered from a debtor by garnishee process under attachment proceedings in a court of competent jurisdiction in another State the recovery is a protection in Illinois against his original creditor and the fact that the debt may have been put into a judgment does not change the rule and the court granted a perpetual injunction restraining the collection of the judgment recovered by the debtor in the Illinois court.

In Drake on Attachments, (7 ed.) sec. 621, it is said that where the action is pending in one court and the garnishment in another, and the courts are of different jurisdictions, that which was first instituted will be sustained; and that when the action is in such a situation that the garnishee, if charged, cannot avail himself of the judgment in attachment as a bar to recovery in the action, he can-
62 not be held as a garnishee. To the same effect see 14 Am. & Eng. Ency. of Law, (2 ed.) p. 775, and foot note 3.

Tourville had recovered his judgment for the debt when the Flannigan suit by attachment was commenced, which judgment was never reversed and, under the foregoing authorities, the appellant could have successfully interposed the Flannigan judgment as a bar to a recovery against it as garnishee in the Flannigan suit. The bill of interpleader does not allege that this defense, or any other defense, was interposed by the appellant in the Flannigan suit. Appellant seems to have contented itself by trying to establish an offset of forty-three dollars and twenty-eight cents to the Tourville claim it had paid on a prior void judgment rendered against it as garnishee in an Illinois court in favor of Flannigan in his first attachment suit against Tourville. Having failed to establish the offset it seems to us that it cannot now come into a court of equity and assume the innocent role of a stakeholder and compel Tourville to re-litigate his claim which he has successfully reduced to a judgment at law.

A stakeholder in equity is defined to be "one who has in his hands money or other property claimed by several others." Bouvier's Law Dict. A debtor may occupy the situation of a stakeholder in equity when he acknowledges that he owes the debt; that it is due to one or the other of several claimants but that he is not advised to which of them, and when he deposits the money in court and asks that the contesting claimants may litigate their claims between themselves. The appellant is not in this situation. It does not occupy the equitable ground of a stakeholder. It has
63 contested the Tourville claim through every court to which it could resort and having lost in that contest it is in no position to ask that Tourville or his assignee be compelled to re-litigate his claim with a stranger to the original suit. But it is contended by appellant that as Flannigan voluntarily appeared in court and filed his answer claiming priority to the so called fund that the court erred in dismissing the bill. The bill was to compel Flannigan and Rule, assignees of Tourville, to interplead. Flannigan's willingness to submit his person and judgment to an interpleader did not have the effect to give the court jurisdiction and power to compel Rule to submit his judgment also to an interpleader nor deprive him of the right to demur to the appellant's bill on the ground that it stated no equity nor deprived the court of the right to pass on his return in the nature of a demurrer. Flannigan cannot alone interplead nor can he force Rule to join in an interpleader. Two things were necessary to authorize the court to order an interpleader. First, an appropriate bill for that purpose and, second, jurisdiction of the parties making adverse claims to the thing to be interpleaded for. The court had jurisdiction of the parties but it ruled that the bill for the interpleader did not state facts sufficient to authorize it to order the parties to interplead. If this ruling of the court was correct then it rightfully dismissed the bill.

The Tourville and Flannigan judgments are both judgments at law against the same judgment debtor and for the same debt. Can

the defendant in such circumstances compel its judgment creditors to come into a court of equity and interplead for the debt, is
64 the question raised by the pleadings. A judgment is a finality. It ends the controversy as between the parties and it would seem, on principle, the party in whose favor a judgment has been rendered should not be called upon by the judgment creditor a second time to make good his claim unless the integrity of the judgment itself is directly attacked for fraud, or that other claimants of the debt or fund, in whose favor no judgment has been rendered, make claim to the fund. We have been cited to no case where it has been held that ordinary judgment creditors having a common debtor have ever been required to come into a court of equity and interplead for the purpose of determining which of the two judgments should be paid.

Priorities may be adjudicated by an interpleader's bill where there are conflicting claims as to which of several claimants should be first paid out of a particular fund or from the sale of specific property and on which the claimants claim to have legal or equitable liens; but ordinary judgment creditors are not in this class. That they cannot be compelled to interplead at the instance of a common debtor is, we think, supported both on authority and reason. Cheever *v.* Hodgson, 9 Mo. App. 565; Dodds *v.* Gregory, 51 Miss. 351; Woodruff *v.* Taylor, 20 Vt. 65; Provident Savings Institution *v.* White, 115 Mass. 112. The cases of Hamilton *v.* Marks, 5 De Gex & Smale, 638; Johnson *v.* Maxey, 43 Ala. 521; Mills *v.* Townsend, 109 Mass. 115; Newhall *v.* Kastens, 70 Ill. 156; Building Association *v.* Joy, 56 Mo. App. 433, cited and relied on by appellant do not meet the difficulty in the case at bar. In each of the above cases the debtor occupied the situation
65 of a stakeholder and as to some of the claimants there had been no judgment. The non-judgment claimants have never had their day in court and were therefore in a situation to come into a court of equity and set up their claims against a judgment claimant; but here both claimants have had their day in court and appellant has had its day and opportunity in court to make its defense to both of the claims. It defended the Tourville suit but, for aught that appears in the bill of interpleader and in the pleadings, the defense it might have successfully made as garnishee in the Flannigan suit it did not make and it is too late now to require Rule, the assignee of Tourville, to come into a court of equity and interplead for a debt that has been reduced to a final judgment and to show his superior claim by showing priority of suit and priority of judgment over the Flannigan judgment, which the appellant might have done as garnishee as a bar to that suit. It may be that under the ruling in Allen *v.* Watt, *supra*, the appellant, after paying the Tourville judgment, may successfully enjoin the collection of the Flannigan judgment in the courts of Illinois, but we are clearly of opinion that it is not entitled to the relief prayed for.

On the showing it has made by its bill for an interpleader, the

temporary restraining order is dissolved and the judgment is affirmed.

C. C. BLAND.

Barclay and Goode, JJ., concur.

A true copy of the opinion:
Witness my hand and the seal of the St. Louis court of appeals, this thirteenth day of May, 1902.

[Seal of St. Louis Court of Appeals, Mo.]

JOHN H. MURPHY, *Clerk.*

66 I, John H. Murphy, clerk of the St. Louis court of appeals, within and for the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the proceedings had in the above entitled cause in said court as fully as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of St. Louis, this twelfth day of July, 1902.

[Seal of St. Louis Court of Appeals, Mo.]

JOHN H. MURPHY, *Clerk.*

67 And afterwards, to-wit, on the *12th* day of *June*, 1902, plaintiff presented the following petition to Judge Charles C. Bland, presiding judge of the St. Louis court of appeals:—

Petition.

The petition of the Wabash Railroad Company respectfully shows that on the 10th day of June, A. D. 1902, the St. Louis court of appeals of the State of Missouri, rendered a final judgment against your petitioner in a certain cause wherein The Wabash Railroad Company was plaintiff, and Alexander Flannigan and Virgil Rule were defendants, denying to your petitioner the right to interplead, and for costs, and awarded execution thereon, as will appear by reference to the record of the proceedings in said cause, and that on the 10th day of June, A. D. 1902, said court refused to transfer said cause to the supreme court of Missouri, and overruled your petitioner's motion to so transfer said cause, whereby said decision of said St. Louis court of appeals became final, as the court of last resort therein and that by reason of its ruling is the highest court of said State in which a decision in said suit could be had. And your petitioner claims the right to remove said cause to the Supreme Court of the United States by writ of error, under section 709 of the Revised Statutes of the United States, because article 4, section 1, of the Constitution of the United States requires that full faith and credit shall be given in each State to the judicial proceedings of every State and it affirm-

atively appears in the bill filed in this cause (and is admitted in the demurrer of the defendant and by the answer of the other) and also in the motion for rehearing filed in the court below, that the two judgments submitted for a determination of their respective priority, were rendered in different States and against a common fund and against petitioner solely, and because the record herewith submitted shows that the decision of the trial court and its affirmance in this court "*necessarily involved*" an adverse adjudication of
68 the equal right and dignity of the Illinois judgment, guaranteed by the Constitution, to satisfaction out of the common fund against which it and the Missouri judgment were rendered. Wherefore it appears both the judgment of the trial court and the court of appeals were against the right and privilege, under said section of the Constitution, claimed by petitioner and your petitioner was denied a privilege or immunity secured to him by the Constitution of the United States as appears from the necessary legal effect of both the judgment of the trial court and this honorable court and as is fully shown from the records of the proceedings in said cause which is herewith submitted.

Wherefore your petitioner prays the allowance of a writ of error, returnable into the Supreme Court of the United States, and for citation and supersedeas; and your petitioner will ever pray.

GEORGE S. GROVER,
Attorney for Plaintiff.

Let the writ of error issue as prayed.

And afterwards, to-wit, on the *12th* day of *June*, Charles C. Bland, presiding judge of the St. Louis court of appeals overruled said petition by the following memorandum:

In the St. Louis Court of Appeals, March Term, 1902.

WABASH RAILROAD CO., Appellant,
v.
ALEXANDER FLANNIGAN ET AL., Respondents. } No. 8267.

In the matter of the application of appellant for a writ of error to the United States Supreme Court.

In Wabash Railroad Company *v.* Tourville, 179 U. S. 322
69 the judgment herein involved came under review. The validity of the Tourville judgment, as we understand the opinion, was sustained and its priority over that of Flannigan was adjudged. In the face of this decision we deny the writ.

C. C. BLAND,
Presiding Judge.

I, John H. Murphy, clerk of the St. Louis court of appeals, within and for the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the petition presented to the Hon. Charles C. Bland, presiding judge of said court for a writ of error herein together with his order refusing the same, as fully as the same are now on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court this first day of August, 1902.

[Seal of St. Louis Court of Appeals, Mo.]

JOHN H. MURPHY, *Clerk.*

70 *To* the Supreme Court of the United States of America.

The Petition of THE WABASH RAILROAD COMPANY (a Corporation) for a Writ of Error, Directed to the St. Louis Court of Appeals of the State of Missouri, to Bring before the Supreme Court the Case of The Wabash Railroad Company (a Corporation), Interpleader and Appellant,

against

ALEXANDER FLANNIGAN and VIRGIL RULE, Defendants and Respondents.

The petitioner, The Wabash Railroad Company, respectfully shows to this court, as follows:—

1. Your petitioner is and was at all the times hereinafter mentioned, a consolidated corporation duly organized and created as such under and by virtue of the laws of the States of Ohio, Illinois, Missouri, Michigan and Wisconsin, and as such has capacity to sue and is liable to be sued; and that as such corporation it is a citizen of the State of Ohio.

2. That your petitioner became indebted to one Peter Tourville on the 1st day of June, 1891, in the sum of eighty-one dollars and ninety-eight cents ($81.98) earned as wages as an employee of your petitioner, which said sum was due and payable to said Tourville at the office of your petitioner's treasurer, in the city of St. Louis, Missouri.

3. That on the 10th day of June 1891, said Tourville instituted a suit before a court of competent jurisdiction in the city of St. Louis, State of Missouri against your petitioner, seeking to recover of your petitioner the sum of eighty-one dollars and ninety-eight cents ($81.98) due him as wages earned as aforesaid. That such proceedings were had in said cause; that judgment was
71 therein rendered in favor of said Tourville and against your petitioner for the said sum of eighty-one dollars and ninety-eight cents ($81.98) on account of said wages. That your petitioner appealed said cause to the various courts having appellate jurisdiction of said cause in the State of Missouri and finally the same was, by writ of error, considered by this honorable court and the said

judgment in favor of said Tourville was by this honorable court on the third day of December, 1900, in all things affirmed.

4. That on the 1st day of April, 1895, Alexander Flannigan, a creditor of Peter Tourville, instituted an attachment proceedings against said Tourville before James A. Wyatt, a justice of the peace for St. Clair county in the State of Illinois, who had jurisdiction of the subject matter of the suit and of the person of said Tourville. That in said cause, your petitioner was required to answer and appear as garnishee in response to a writ of garnishment duly issued by said justice. That such other proceedings were had in said cause so that on the 14th day of June, 1895, judgment was rendered therein in favor of the said Flannigan and against the said Tourville, and also against your petitioner as garnishee, for the sum of eighty-one dollars and ninety-eight cents ($81.98) being the sum so owing by your petitioner to said Tourville. That said judgment is and was a final judgment. That no appeal was taken from said judgment by your petitioner, because said judgment was pursuant to the laws of Illinois.

5. That your petitioner at no time owed said Tourville more than the sum of eighty-one dollars and ninety-eight cents ($81.98), and that the said final judgment against your petitioner for said sum in favor of said Flannigan, and the final judgment of the said
72 Tourville against your petitioner were for one and the same debt.

6. During the month of February, 1901, the said Tourville assigned his said judgment against your petitioner to Virgil Rule.

7. That on the 20th day of December, 1900, your petitioner filed in the circuit court of the city of St. Louis, Missouri, its bill of interpleader against the said Flannigan and the said Rule, a copy of which is contained in the annexed transcript of the record of said cause to which your petitioner prays leave to refer, and asks that the same may be considered as a part hereof. That among other things prayed for in said bill of interpleader, your petitioner prayed that inasmuch as he did not know and could not determine which one of said claimants for said sum of eighty-one dollars and ninety-eight cents ($81.98) was entitled thereto, and that inasmuch as your petitioner was in danger of having to pay the said sum twice, that it be permitted to pay said sum into court and that it be discharged and relieved from further liability on account of said indebtedness to said Tourville; that said Flannigan and Rule be required to interplead in said cause and that the court, by its judgment, determine which of said claimants was entitled to said sum.

8. That the said circuit court duly summoned the said Virgil Rule to appear in said cause; and that said Flannigan entered his voluntary appearance therein.

9. That such proceedings were had in said last mentioned cause; that on the 15th day of April, 1901, by leave of court, your petitioner was permitted to file his third amended petition, containing the same prayer as the original petition a copy of which petition appears in the transcript of the record of said cause hereto annexed, to which

your petitioner asks leave to refer and prays that the same may be considered as if fully embodied herein.

10. That the said court, pursuant to the prayer of your petitioner's said third amended petition, on the 15th day of April, 1901,
73 issued an order temporarily restraining the said Flannigan and the said Rule from attempting to enforce their respective judgments pending said cause.

11. That on the 22nd day of April, 1901, the said Flannigan filed in said cause his answer to the said third amended petition of your petitioner, and by his said answer admitted all the allegations contained in said petition, and claimed said fund and stated the facts on which his claim was founded, a copy of which answer is contained in the annexed transcript of the record of said cause, to which your petitioner begs leave to refer and prays that the same may be considered as if embodied herein.

12. That on the 19th day of April, 1901, the said Rule filed in said cause a demurrer to your petitioner's third amended petition.

13. That on the 29th day of April, 1901, the said cause coming on to be heard in said court and the same having been submitted on the pleadings, the said court entered a judgment for the defendants in said cause, the said Flannigan and Rule, denying the prayer of the bill of interpleader and dissolving the temporary injunction.

14. Your petitioner thereupon perfected an appeal from said judgment to the St. Louis court of appeals of the State of Missouri; where said cause came on for hearing at the October term, 1902; that on the 13th day of May, 1902, said cause having theretofore been submitted on briefs and arguments was decided by said court of appeals, adverse to your petitioner and the said judgment of the circuit court was, by the said court of appeals, in all things affirmed.

15. Thereafter, in due time, your petitioner filed a motion for a rehearing in said cause, which was by said court of appeals overruled.

16. That immediately thereafter, your petitioner filed in said cause, a motion praying that the said cause be transferred to the supreme court of Missouri, which motion was by said court overruled.

74 17. That thereafter, on the eighteenth day of June, 1902, your petitioner filed in the supreme court of Missouri, an application and petition for a writ of certiorari, directed to said St. Louis court of appeals, requiring said cause to be transferred to said supreme court. That on the 28th day of June, 1902, said petition and application was, by the said supreme court, overruled and denied.

Your petitioner has hereto annexed a transcript of all the proceedings in said cause, to which it asks leave to refer, and asks that the same may be considered as a part hereof.

18. That the said St. Louis court of appeals is the highest court of law and equity of the said State of Missouri in which a decision could be had in said suit between your petitioner and the said Flannigan and Rule.

19. Your petitioner charges and avers that in said suit while the same was pending in said circuit court and in said court of appeals, the construction of the following clauses of the Constitution of the United States was drawn in question, viz:

The following clause of section 1, article IV: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Section 11, article IV: "The citizens of each State shall be entitled to all the privileges and ammunities of citizens in the several States."

The following clause of section 1, article XIV, of amendments to the Constitution: "No State shall make or enforce any law which shall abridge the privileges or ammunities of citizens of the United States nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

20. Your petitioner says that the decisions of courts on said clauses of the Constitution in said cause were against the
75 rights, title, privilege and exemption specially set up and claimed under said clauses of said Constitution by your petitioner.

Wherefore, your petitioner prays for the allowance of a writ of error, directed to the said St. Louis court of appeals, requiring the said St. Louis court of appeals to send the record and proceedings aforesaid in said cause with all things concerning the same, to this honorable court that the same may be inspected and that this honorable court may cause or order to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done, and also that an order be made fixing the amount of security which your petitioner shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in said St. Louis court of appeals be suspended and stayed until the determination of said writ of error by this honorable court.

GEORGE S. GROVER,
JAMES L. MINNIS,
Attorneys for Wabash Railroad Company.

STATE OF MISSOURI, } ss:
City of St. Louis, }

George S. Grover, being duly sworn, on his oath says, that he is the attorney for the petitioner and makes this affidavit on its behalf. That he has read the foregoing petition, and believes that the facts stated therein are true.

GEORGE S. GROVER.

JOSEPHINE K. BAKER,
Notary Public.

{ Seal of Josephine K. Baker, Notary Public, City of St. Louis, Mo. Commission Expires Jan. 23, 1905. }

My commission expires Jan. 23, 1905.

JULY 21ST, 1902.

Let writ of error issue as prayed for.

DAVID J. BREWER,
Associate Justice Sup. Ct. U. S.

76 [Endorsed:] In the Supreme Court of the United States. The Wabash Railroad Company *vs.* Virgil Rule and Alexander Flannighan. Application for a writ of error.

77 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the St. Louis court of appeals in the State of Missouri, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Wabash Railroad Company, appellant, and Alexander Flannigan and Virgil Rule, respondents, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause
78 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

United States, the 26th day of July, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

79 UNITED STATES OF AMERICA, ss:

To Alexander Flannigan and Virgil Rule, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the St. Louis court of appeals, in the State of Missouri, wherein The Wabash Railroad Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 26th day of July, in the year of our Lord one thousand nine hundred and two.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

80 On this 28th day of July, in the year of our Lord one thousand nine hundred and two, personally appeared before me, the subscriber, —— —— and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — day of ——. A. D. 190–.

—— ——.

Service of the within writ is hereby acknowledged this 28th day of July 1902.

HENRY W. BLODGETT,
Attorney of Record for Alexander Flannigan, Defendant in Error.

Executed the within writ in the city of St. Louis, this 29" day of July 1902, by delivering a true copy of same to Virgil Rule, one of the defendants in error, of the within cause.

THOS. E. BARRETT,
Marshal St. Louis Court of Appeals.

81 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, John H. Murphy, clerk of the St. Louis court of appeals, within and for the State of Missouri aforesaid, in obedience to the mandate of the within writ, under the seal of said court, distinctly and openly, transmit a full, true and complete transcript of the record and proceedings, with all things concerning the same to the honorable Supreme Court of the United States as fully as the same remain of record and on file in my office.

Seal of St. Louis Court of Appeals, Mo.

In testimony whereof, I hereto set my hand and affix the seal of said court at office in the city of St. Louis, this first day of August, 1902.

JOHN H. MURPHY, *Clerk.*

Endorsed on cover: File No. 18646. Missouri, St. Louis court of appeals. Term No. 115. The Wabash Railroad Company, plaintiff in error, *vs.* Alexander Flannigan and Virgil Rule. Filed August 16, 1902.

10678

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

No. 115.

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,

vs.

ALEXANDER FLANNIGAN AND VIRGIL RULE.

In Error to the St. Louis Court of Appeals of the State of Missouri.

STATEMENT.

In order to fully understand the issues raised by the pleadings in the case at bar, an historical review of the undisputed facts stated in the bill, as well as a reference to the record upon which they are based, is, we think, essential.

Tourville vs. Wabash, 61 Mo. Appeals, 527;
Same case, 148 Mo. 614;
Wabash vs. Tourville, 179 U. S. 322.

The defendant in error, Rule, is the assignee of Tourville, and is here claiming under him, and the allegations of the bill in equity here under consideration are all simply a repetition of the undisputed testimony found in the record above cited.

The case at bar, therefore, is but a continuation of the original litigation above referred to.

In 1887, Tourville, then in Illinois, executed a note for $100.00 to Flannigan, on account of legal services rendered by Flannigan, in that year, to Tourville, in that state.

In May, and part of June, 1891, Tourville worked for the Wabash Railroad Company, in North St. Louis, as a switchman, and then and there earned $81.98 as wages.

Tourville was then the head of a family, residing with them in Missouri.

The Wabash Company was then, as now, a consolidated corporation, organized in Ohio, under the laws of that state, out of five constituent companies, one each in the states of Ohio, Michigan, Indiana, Illinois, and Missouri.

These constituent companies all ceased to exist on the 1st day of August, 1889, after the organization of the Wabash Company in Ohio, as before stated.

Ashley vs. Ryan, 153 U. S. 436.

In May and June, 1891, the Ohio corporation, the Wabash Company, the plaintiff in error here, was operating a line of railway in the states of Ohio, Michigan, Indiana, Illinois, and Missouri, owning property in Illinois and Missouri, subject to execution, having agents in Illinois and Missouri, upon whom legal process could be served.

On the 3d day of June, 1891, Flannigan sued Tourville in Illinois; in attachment, on the note above described, and garnisheed the Wabash in that state.

Tourville, and his attorney, Rule, were duly notified by the Wabash, of the institution of the suit by Flannigan, in Illinois, and both Tourville and Rule refused to interpose any defense to it.

61 Mo. Appeals, 531.

The Wabash Company then tendered to Tourville, and to Rule, the amount of Tourville's exemptions in Illinois, then amounting to $50.00, the remainder to be held pending the then outstanding litigation in Illinois.

61 Mo. Appeals, 531.

In other words, Tourville and Rule, then, as now, insisted upon the Wabash Company paying Tourville's wages in Missouri, to that individual, said wages amounting to $81.98, and Tourville's undisputed debt to Flannigan in Illinois also, amounting to $100.00, out of the one fund in the hands of the Wabash Company, which amounted to precisely $81.98, and which never has exceeded said last named sum, exclusive of lawful interest thereon.

In 1891, the Wabash Company began a contest in the courts of Illinois, with Tourville's creditor, Flannigan, attacking the validity of his claim, pleading Tourville's exemptions, and also interposing the record of the Missouri proceedings hereinafter described, as a

bar. That contest did not end until nearly five years afterwards, or, in 1895, when all further defense was rendered unavailing, by a decision of the Supreme Court of Illinois, first rendered in 1892, in a test case, involving the same question.

Wabash R. R. vs. Dongan, 142 Ill. 248.

And in all that time, Tourville and Rule stood by and allowed the plaintiff in error here, a mere stakeholder, to make that fight for their benefit, without lifting a hand or spending a cent in their own behalf, and without interposing at any time any defense whatever to Flannigan's claim.

On June 10, 1891, Tourville left the service of the Wabash, and on that day instituted a suit against it before a justice of the peace in Missouri, for the full amount of his wages ($81.98). He obtained a judgment by default before the justice. The Wabash Company thereupon perfected an appeal in the case to the Circuit Court of the City of St. Louis, Missouri.

In the meantime, the Flannigan case had proceeded to final judgment in the appellate court in Illinois, where, in 1892, the sum of $21.83 on the judgment, or $71.83 less $50.00 exemption, and $21.55 costs, in all $43.38 was collected of the Wabash Company on execution.

This judgment in accordance with the practice then prevailing in Illinois, was in the following form: Peter Tourville to the use of Alexander Flannigan, plaintiff, vs. Wabash Railroad Company, garnishee.

In the same year, after the collection of the Flannigan judgment above described, the Tourville case came on for trial *de novo* in the Circuit Court of the City of St. Louis, Missouri.

There, upon proof of payment of the sum of $43.38 on the Flannigan judgment in Illinois, the Circuit Court of St. Louis, Missouri, entered the following judgment:

Amount due Tourville as wages, - -	$81.98
Less judgment and costs paid on execution in Flannigan case in Illinois, - -	43.38
Balance due, for which judgment was rendered,	38.60

Tourville perfected an appeal from this ruling to the St. Louis Court of Appeals, where, on March 26, 1895, the judgment below was reversed with directions to the lower court to enter up a judgment for plaintiff for $81.00.

61 Mo. Appeals, 527.

The reason assigned for this ruling in the appellate court was that the justice had failed to mail to Tourville in Missouri, prior to the trial, a notice of the proceedings as required by the statute of

Illinois, although it was admitted at the trial that long prior to the judgment in Illinois and in ample time to have interposed a defense thereto, both Tourville and his attorney, Rule, had each been personally notified by the Wabash Company of the pendency of the Illinois proceeding, and that both Tourville and Rule had then and there refused to defend against the Illinois suit instituted by Flannigan as aforesaid.

On the 1st day of April, 1895, before the mandate above described reached the circuit court in Missouri, Flannigan instituted a second suit in Illinois to recover the balance due him from Tourville on the note above described, and again garnisheed the Wabash Company in Illinois.

This last named case was pending and undetermined in Illinois in May, 1895, when the mandate above described reached the circuit court in the Tourville case in Missouri.

In the circuit court in Missouri, in May, 1895, at the second trial of the case, the Wabash Company offered to prove by competent evidence the pendency of the second Illinois proceeding.

The court excluded the testimony and entered judgment in favor of Tourville for $81.00. Subsequently, and as late as December 4, 1895, in the Missouri proceeding, the Wabash Company offered to prove that on the 15th day of May, 1895, Flannigan obtained a judgment against Tourville in Illinois for $139.30, a judgment which neither Tourville nor Rule ever either defended against, or disputed, on the note above described, and also a judgment against the Wabash Company, as garnishee, for $81.98, the whole amount of the wages due to Tourville from the Wabash Company, after the same unavailing defenses, as above stated, had again been interposed by the Wabash Company to Flannigan's second suit in Illinois.

The Wabash Company then perfected an appeal in the Missouri case at law, to the Supreme Court of Missouri, where, on October 14, 1899, the judgment of the Circuit Court of the City of St. Louis, Missouri, was affirmed.

Tourville vs. Wabash, 148 Mo. 614.

The decision in this case was based on the sole ground that the two judgments above described—the one in favor of Tourville to the use of Flannigan as aforesaid, against the Wabash in Illinois, and the one in favor of Tourville against the Wabash in Missouri—were in different states, and therefore "foreign to each other."

The Wabash Company then perfected an appeal in the Tourville case to this court, where, on the 3d day of December, 1900, the judgment of the Supreme Court of Missouri was affirmed.

Wabash vs. Tourville, 179 U. S. 322.

The affirmance of this judgment at law in this court was based upon the same reason given by the Supreme Court of Missouri. From this judgment in this court Mr. Justice Brewer dissented.

On the 17th day of December, 1900, immediately after the expiration of the period authorized by the rules of this court for filing motions of rehearing (Rule 30, Supreme Court of the United States, Foster's Federal Practice, Vol. II, p 1433), the Wabash Company filed a bill of interpleader in the Circuit Court of the City of St. Louis, Missouri.

The object of this bill, which was an equitable proceeding, was an honest endeavor, made in good faith, by the Wabash Company, to get the rival claimants to this one fund into the same jurisdiction, if possible, so as to avoid paying the same debt twice. The original bill of interpleader will be found on pages 11 and 12 of the record in this case. Personal service was had upon this bill upon Rule, the assignee of Tourville, who, on the 22d day of December, 1900, filed a demurrer to the bill, stating two grounds: first, that the court had no jurisdiction over Flannigan; and, second, that the judgment in favor of Tourville had been assigned to Rule, and that such judgment had priority over the Flannigan judgment in Illinois, and that such priority in favor of Rule as assignee had been determined in his favor by the St. Louis Court of Appeals, the Supreme Court of the State of Missouri, and the Supreme Court of the United States. (Record, p. 13.)

On the 5th day of February, 1901, Flannigan entered his voluntary appearance in the cause, and on the same day filed an answer admitting each and every allegation in the bill, and claiming priority to the fund in dispute under the Illinois judgment. (Record, p. 14.)

On the 20th day of February, 1901, the Wabash Company filed an amended bill. (Record, pp. 14 to 16, inclusive.)

On the 26th day of February, 1901, the second amended bill above described was stricken out on the motion of the defendant Rule. On the 15th day of April, 1901, the plaintiff was granted leave to file its third amended bill, over the objections of the defendant Rule. (Record, pp. 16 and 17.)

On the 15th day of April, 1901, a temporary injunction was granted in the cause.

On the same day the sheriff filed his return, in which it was recited that he had levied upon defendant's property, pursuant to an execution duly issued upon the Tourville judgment in Missouri.

On the 19th day of April, 1901, Rule filed a return to the third amended petition of plaintiff, setting up *in extenso* the same grounds of objections already stated in his demurrer to the original bill. (Record, pp. 18 to 20, inclusive.)

On the 22d day of April, 1901, Flannigan filed an answer to the third amended petition, again admitting every allegation in the

bill, and again claiming the fund in dispute under his Illinois judgment.

On the 22d day of April, 1901, plaintiff filed its motion for the relief prayed for, notwithstanding the return of Rule. (Record, p. 21.)

On the 29th day of April, 1901, the trial court entered the following order: "Prayer of bill denied, and temporary injunction dissolved." (Record, p. 22.)

To which ruling of the court the plaintiff (Wabash Company) then and there duly excepted and saved its exceptions. (Record, p. 23.)

On the 30th day of April, 1901, in due time, the Wabash Company filed its motion for rehearing in said case, assigning as error, among other things, the following: "14. Because the effect of the court's ruling in this cause will be to compel the plaintiff, the interpleader herein, to pay Tourville's wages and his debts too; or, in other words, pay the same debt twice. 15. Because the court erred in refusing to give full faith and credit to the judgment of a sister state, as required by the constitution and laws of the United States." (Record, p. 24.)

On the 7th day of May, 1901, plaintiff's said motion for rehearing was overruled, to which ruling, order and action of the court, plaintiff then and there duly excepted and saved its exceptions. (Record, p. 24.)

Thereafter, in due time, plaintiff perfected its appeal to the St. Louis Court of Appeals. (Record, p. 24.)

On the 30th day of July, 1901, in due time, plaintiff filed its bill of exceptions in said cause. (Record, p. 25.)

At the March term, 1902, the judgment of the Circuit Court of the City of St. Louis was affirmed in the St. Louis Court of Appeals. (Record, pp. 36 to 41.)

On the 12th day of June, 1902, the plaintiff in error, the Wabash Company, filed a petition for a writ of error with the presiding judge of the St. Louis Court of Appeals. (Record, pp. 41 and 42.)

On the same day said writ of error was denied. (Record, p. 42.)

The plaintiff in error, Wabash Company, thereafter presented the same petition to Mr. Justice Brewer. (Record, pp. 43 to 46.)

On the 21st day of July, 1902, the following entry was made, "Let writ of error issue as prayed for. David J. Brewer, Associate Justice Supreme Court of United States." (Record, p. 47.)

The writ was duly served upon the defendants, Rule and Flannigan. (Record, p. 48.)

During all of this litigation, however, the relative positions of the respective claimants to the fund herein in controversy have not changed in the slightest degree, as Flannigan, during the litigation

in Missouri between Tourville and Rule and the Wabash, in which he was also interested, retained his judgment in Illinois, whose lien was unimpaired, and whose security was undiminished, and upon which interest is still uninterruptedly accumulating, while Tourville and Rule were then, always have been, and still are, in exactly the same condition as to their judgment in Missouri.

There never was a hearing of this cause given to either Flannigan or Rule, and the question of priority, as between these respective claimants to the fund, which is, it is conceded, amounts to $81.98, and no more, in the hands of the plaintiff in error, the Wabash Company, has never as yet been determined.

In fact, the Circuit Court of the City of St. Louis, Missouri, by denying the relief prayed for in the bill, and by dissolving the temporary injunction, refused to either entertain the bill, grant the relief prayed for, or hear or determine the respective priorities between the rival claimants to the fund above described,

The following issues are, therefore, we think, fully and fairly presented in this record:

First.—Whether a court of equity in Missouri can violate or ignore the provisions of section 1 of article 4 of the constitution of the United States by, in effect, refusing to give full faith and credit to judicial proceedings of the state of Illinois.

Second.—Whether a court of equity in Missouri can deny to a stakeholder, or to other claimant of the fund in the stakeholder's hands, a hearing upon a proper bill of interpleader, when such claimants of the fund in dispute are citizens of different states, and all parties have appeared, and are in court, before the chancellor.

Third.—Whether, under such circumstances, a dismissal of such a bill of interpleader, without a hearing, is not a denial to the respective claimants, and also to the stakeholder as well, of a "title, right, privilege or immunity, claimed by the parties under the laws of the United States."

Fourth.—Whether a court of equity has ample and perfect jurisdiction over such a bill of interpleader, as well after the respective and adverse claims to the fund have been reduced to judgment as before, so as to protect an innocent stakeholder who comes into court with clean hands, as in this case, from paying the same debt twice.

Fifth.—Whether the plaintiff in error in this case, after having contested the validity of both claims to the fund in dispute, but not their priority, in the courts of last resort in the states of Illinois and Missouri, has been guilty of laches at any time since the inception of this controversy.

These issues will here be discussed in the order above stated.

BRIEF.

I.

This court has ample jurisdiction, to hear and determine this controversy, by reason of the constitutional question apparent upon the face of the record.

The bill of interpleader in the case at bar alleges that two judgment creditors, whose respective claims have been fully and finally determined at law, in the courts of last resort, in the states of Illinois and Missouri, are each claiming priority to a certain fund in the plaintiff's hands, and are proceeding to collect the same from the plaintiff by execution.

That the fund in hand is insufficient to pay both claims, as each judgment is for the entire amount in the plaintiff's hands. That plaintiff does not know, and cannot determine the priorities, between these claimants, and is in danger of being compelled to pay the same debt twice.

The prayer of the bill is that the fund may be deposited in court, the claimants to the fund be required to interplead for it, and the plaintiff to be discharged thereafter with its costs.

The two claimants were brought in, one by appearance, and the other by valid process.

One, the Illinois claimant, filed an answer, admitting all the allegations of the bill, and claiming priority for his judgment. The other, the Missouri claimant, demurred to the bill, and also claimed priority for his judgment.

There never was any hearing of the cause.

In lieu of that, the bill was dismissed.

The plaintiff in error, then specifically assigned as error, among others:

"Because the court erred in refusing to give full faith and credit to the judgment of a sister state, as required by the constitution and laws of the United States." (Record, p. 24.)

Upon this showing, we submit, this court has jurisdiction to hear and determine this controversy, because it appears from the record that a constitutional question was not only raised, but necessarily passed upon as well, in the trial court.

And this is true, although the trial court did not, in terms, pass upon the point.

It is sufficient if it appear from the record by clear intendment.

In support of the above proposition, we beg leave to cite the following decisions of this court:

Ins. Co. vs. Needles, 113 U. S. 574;
Carpenter vs. Strange, 141 U. S. 87;

Water Co. vs. Green Bay, 142 U. S. 269;
Gordon vs. Bank, 144 U. S. 97;
Cooke vs. Avery, 147 U. S. 375;
Powell vs. Brunswick County, 150 U. S. 440;
Scott vs. McNeal, 154 U. S. 34;
Sayward vs. Denny, 158 U. S. 180;
Ry. vs. Chicago, 166 U. S. 226;
Canal Co. vs. Paper Co., 172 U. S. 58;
Water Power Co. vs. Ry. Co., 172 U. S. 475;
Ry. vs. Sturm, 174 U. S. 710.

It may be contended that the decision of the court below in no way affected the integrity of the Illinois judgment.

That judgment remains today, as it existed before the suit was instituted, a valid, final judgment. That fact stands admitted in this record.

The allegations to that effect in the bill, are admitted by the answer of Flannigan, and by the demurrer of Rule.

This situation, instead of mitigating against our contention, is, in fact, its foundation.

There are two well-recognized instances wherein the judgment of a sister state may become a federal question:

First.—Where the existence, or validity of such judgment is in dispute in a state court, and the decision impairs its integrity, or existence.

Second.—Where the effect of the judgment according to the law and usage of the state where rendered is in dispute in a state court, and the decision is adverse "to the claimed or contended effect of such judgment."

The case at bar falls under the latter instance.

The following decisions of this court are illustrations of this principle:

Crapo vs. Kelley, 88 U. S. 610;
Dupasser vs. Rochersar, 21 Wallace 130;
Live Stock Company vs. Butchers Union, 120 U. S. 141;
Carpenter vs. Strange, 141 U. S. 87;
Huntington vs. Attrill, 146 U. S. 657;
Ry. vs. Sturm, 174 U. S. 710.

It is clearly deducible, we think, from the above cases that when a suit in a state court involves in any manner a judgment of a sister state, and one of the parties to the suit sets up or claims that such judgment, under the law and usage of the state where rendered, gives him certain rights, or entitles him to certain remedies, and the state court denies such claim, a federal question is presented of which this court will take jurisdiction by writ of error.

As said in Green vs. Van Buskirk, 5 Wallace 310, that the claimed effect of the judgment may not be sustained by this court on final hearing. It is the claim or contention alone which gives rise to the federal question.

The phrase "claimed or set up," "effect of the judgment" as used in the above decisions, does not mean that the pleadings shall specify in detail or specially the effect of the judgment under the laws of the state where rendered. It seems simply that if the remedy prayed in the petition as the result of the judgment is denied, the federal question arises. The relief prayed for constitutes the claim as to the effect of the judgment. In the case of Huntington vs. Attrill *et al.*, *supra*, the petition simply recited the recovery of the judgment, and the execution of the fraudulent conveyances, and then prayed that the conveyances be set aside and the property subjected to the payment of the judgment. The prayer of the petition for the relief by implication "set up and claimed" that the judgment entitled the plaintiff to the relief demanded. The bill was dismissed and this court held that a federal question was thereby presented.

The case of Crapo vs. Kelley, *supra*, was in the nature of an action of replevin, wherein the only issue presented by the pleadings was the right to the property in controversy. The denial by the state court of the plaintiff's claim to the property, this court decided, presented a federal question.

In the case at bar the interpleader filed its bill setting forth the two judgments, and prayed that it be permitted to pay the money into court, and that it be discharged from all liability to the defendants, and that the defendants be required to interplead. This prayer, as in the cases cited, asserted a right to a remedy by virtue of the foreign judgment, and the denial of this claim by the state court presented a federal question.

It is to be borne in mind that in the case at bar the holder of the Illinois judgment acquiesced in the prayer of the bill and set up his claim to the money, while the holder of the Missouri judgment denied the right of the interpleader to require him to enter into a contest with the Illinois creditor for the money. So the question presented was whether the effect of the Illinois judgment was such as to entitle the interpleader to be discharged by paying the money in court, and then require the Missouri creditor and the Illinois creditor to submit their respective claims to the money to the decision of the court. If the interpleader's bill means anything, it certainly means that the interpleader based its right to pay the money into court and thenceforth be discharged, and to require the Missouri creditor to interplead on the effect of the Illinois judgment. If this be true it necessarily follows that the state court denied the Illinois judgment, the effect the interpleader claimed for it, which denial presents a federal question.

According to all the cases, the fact that the Missouri court did not discuss in its opinion the federal question but decided the case on other grounds, is of no consequence. The question is, did the state court, by its judgment, necessarily deny to the Illinois judgment the effect claimed for it by the interpleader? If it did, it is wholly unimportant what reasons it assigned in its opinion for so doing.

In conclusion on this point, we respectfully insist that a federal question is clearly presented in this record, and that interpleader is entitled to the writ.

II.

By denying the relief prayed for, the court below deprived the plaintiff in error of its property "without due process of law," in violation of the 14th amendment to the constitution of the United States.

This point was not specifically assigned, but it does appear by clear intendment upon the face of the record, and was in fact directly ruled upon against the plaintiff in error in the trial court. (Record, pp. 4, 5, 23, 27.)

This is apparent, when the situation disclosed by the record is re-examined, for this purpose. The admitted facts there found, are as follows:

1. Flannigan was the holder of a judgment against Tourville, and the plaintiff in error, based upon an unpaid and undisputed debt, due him from Tourville, obtained by Flannigan in the courts of Illinois.

The validity of that judgment had been finally established in the courts of last resort in that state.

2. Rule, the assignee of Tourville, was the holder of a judgment against plaintiff in error, whose validity had been established by the courts of last resort in Missouri.

3. Both judgments were for the entire amount of the fund in the hands of plaintiff in error, the sum of $81.98. So that the plaintiff in error, a mere stakeholder, if no relief in equity was afforded to it, would be compelled at law, to pay the same debt twice.

This precise allegation appears, in apt terms, in the bill.

4. The priority of either judgment, over the other, in different states, thus "foreign to each other," had never been established, in any court, either of law, or equity, anywhere.

This priority, the plaintiff in error, a mere stakeholder, was wholly unable to determine.

This precise allegation also appeared in the bill.

5. The plaintiff in error, it was admitted, was an innocent and disinterested stakeholder.

Now to deny, as the court below did, to such a stakeholder, the right to deposit the money in court, so that the priorities of the rival claimants might be determined, and the unsuccessful claimant whoever it might be, precluded from further recovery against the stakeholder, was, we insist, in effect, to compel the stakeholder to pay both claims, or the same debt twice, and thus deprive it of its "property without due process of law," in violation of the spirit, as well as the letter of the constitution of the United States.

This point expressly appears so clearly in this record, as to require, we think, no further discussion, or elaboration, in its support.

It seems to us, to be settled in our favor, by this court, in the recent case of Ry. vs. Sturm, 174 U. S. 710.

III.

The plaintiff in error was entitled to the relief prayed for by it, and Flannigan was entitled to a hearing on the issue of priority tendered by him.

Again referring to the bill of interpleader (Record, pp. 3, 4, 5), it was there expressly alleged, as before stated, that the plaintiff in error was unable to determine the priorities between Flannigan, the Illinois judgment creditor, and Rule, the assignee of Tourville, the Missouri judgment creditor, who were both seeking to sequester the same fund in the hands of plaintiff in error.

Flannigan, the holder of the Illinois judgment, voluntarily entered his appearance to the bill, filed an answer thereto (Record, p. 20), in which all the allegations of the bill were admitted, and, by the same pleading, the fund in dispute was claimed by him by reason of the alleged priority of his Illinois judgment.

Rule, who was served with valid process, at the place of his domicile, a forum where he appeared with the least trouble, or expense, filed a return, which was, in effect, a demurrer to the bill, in which all the facts therein alleged were admitted, and in which he also claimed the fund in dispute, by reason of the alleged priority of his Missouri judgment.

The difference, in position, between these two rival claimants, was therefore this:

Flannigan was willing to submit the question of priority between the two judgments for the same fund in different states to the decision of the chancellor upon a hearing, and therefore, he tendered that issue, and claimed that right in his answer.

Rule, on the contrary, while claiming priority for himself, under the Tourville judgment in Missouri, challenged the right of the chancellor to hear, or determine the question of priority, as between himself and Flannigan.

As between the two, in this record, it is quite clear that Flanni-

gan came into a court of equity with "clean hands," while Rule did not.

The chancellor adopted Rule's view of the matter, and so did the appellate court, which resulted in a dismissal of the bill, thus denying to the plaintiff in error, a right claimed by it under the constitution and laws of the United States, to have the question of priority, then and there in issue, between these claimants to the same fund who were thus "foreign to each other," determined; and denying also to Flannigan, a citizen of Illinois, the right to a hearing on an issue properly tendered by him in his answer to this bill, as to whether his judgment obtained in Illinois, was prior in right to that of the judgment held by Rule, the assignee of Tourville, obtained in Missouri, a right to which Flannigan was clearly entitled, under the constitution and laws of the United States.

Here, we submit, is another firm basis for the jurisdiction of this court over this controversy.

The plaintiff in error is entitled to the relief prayed for in order to protect it from the payment of the same debt twice, while Flannigan is equally entitled to a hearing on the question of priority upon the plainest and soundest principles of equity jurisprudence.

IV.

A bill of interpleader may be properly filed in any cause, as well after the adverse claims to the fund have been reduced to judgment, as prior to that time.

Upon this point the learned justices of the St. Louis Court of Appeals, in their opinion in this case, said:

"But that such a court has jurisdiction of a bill for an interpleader filed by the judgment debtor, to require two judgment plaintiffs to come into court and interplead for the purpose of ascertaining which one of the two judgments at law against the common debtor shall be paid and which shall not be, is an unheard-of proposition, without the semblance of reason or authority to support it."

In support of the text, the following authorities are cited:

Cheever vs. Hodgson, 9 Mo. App. 565;
Dodds vs. Gregory, 51 Miss. 351;
Woodruff vs. Taylor, 20 Vt. 65;

To which can fairly be added,

Provident Savings Inst'n vs. White, 115 Mass. 112.

In Cheever's case, *supra*, the priorities between the respective claimants to the fund in dispute, had all been fixed and determined at law, prior to the filing of the bill of interpleader.

In this case such priorities have not only never been determined, but the court below, with both claimants before it, and all the facts admitted, refused to pass upon that question, and dismissed the bill in which that precise issue was tendered.

The distinction between the two cases is too obvious to require further discussion.

The same distinction will be found, upon examination, to exist between this case and Dodds vs. Gregory *et al.*, 61 Miss. 351. The last named decision is also based in part, upon a statute peculiar to Mississippi, relative to interpleader, which, of course, could not be invoked here.

In Woodruff vs. Taylor, 20 Vt. 65, the priority of one claimant (the American) was manifest.

There, also, the contest was at law, and no resort was ever had to a court of equity, in order that the question of priority between the claimants might be fixed and determined.

In Savings Inst'n vs. White, 115 Mass. 112, it was properly held, we think, that a bill of interpleader, filed by a claimant of the fund, and not a stakeholder, would not lie.

Here it is admitted that the plaintiff in error was not in collusion with or interested in either claim to the fund in dispute.

The authorities above cited, therefore, do not support the text of the opinion above quoted.

On the other hand, there is abundant authority for the proposition that bills of interpleader may be filed after the adverse claims have been reduced to judgment.

Mr. Justice Story in his great work on equity jurisprudence thus states the rule for which we here contend:

"But a bill of interpleader may be filed after a verdict at law, if the effect of the action was merely to ascertain the damages due the plaintiff at law, who was a defendant in the equity case."

> Story, Equity Jurisprudence, 13th Edn., Vol. 2, (note) p. 137.

In Hamilton vs. Marks, 5 De Gex & Smale 638 (13 Eng. Law and Equity Reports, 321), a bill of interpleader in equity was filed after one of the numerous claimants to the fund had obtained a judgment at law against the insurance company who filed the bill.

Upon that point (p. 324), the vice-chancellor said:

"Upon this motion the court can decide nothing as to the title of the absent defendants. As to the $700, the circumstances clearly raise a case of interpleader; the plaintiff having paid the money into court, and having made an affidavit that there is no collusion, has entitled himself to the injunction he has obtained.

But it is said that the plaintiff cannot file a bill after the demand has been contested by him, and has been decided against him at law.

The case of Cornish vs. Tanner has been referred to in support of such a rule; but the present case differs from that. Here the dispute at law was confined to the *quantum* of demand, which could be settled at law; and there is no rule of this court to preclude a defendant at law who has done that from obtaining relief in an interpleader suit."

There, as here, the amount of the conflicting claims against the interpleader had been fixed by a court of law; and had been there reduced to judgment.

There, as here, a stakeholder having no interest in the controversy, and unable to settle the question of priority between the conflicting claims, filed a bill of interpleader in equity in order that such an issue could be there determined and the stakeholder protected from paying the same debt twice. And it was there held by the chancery court of England, not only that the bill would lie, but, also, that the stakeholder was, under such circumstances, after paying the fund in dispute into court, the exact prayer of the bill in the case at bar, entitled to its costs and also to its discharge.

The principle there announced is, we insist, decisive of the case at bar.

In Johnson vs. Maxey, 43 Alabama 521, the stakeholder, after a judgment at law against it in a condemnation proceeding, brought the money into court in order that it might be there determined whether the judgment should be paid to the judgment creditor or a rival claimant, who asserted title to the land in dispute, and it was there held to be a proper action.

There, as in the English case above cited, as well as in the case at bar, the question of priority between adverse claims to the fund, the *quantum* of which had been fixed and determined by a judgment at law, was the issue tendered by the stakeholder through a bill of interpleader, in a court of equity, and there, as here, it was necessary to so determine that issue in order to protect the disinterested and innocent stakeholder from paying the same debt twice.

And for that reason it was there held that a bill of interpleader would lie.

In Newhall vs. Kastens, 70 Ills. 156, it was held that the owner of premises could maintain a bill of interpleader as against adverse claimants to a fund in his hands, even where such claimants had secured statutory liens by suits, for labor performed and materials furnished for improvements on such owner's land.

In Mills vs. Townsend, 109 Mass. 115, in holding that a corporation could maintain a bill of interpleader, the court said:

"They have no beneficial interest in the dividend; each of the defendants claim it; and the plaintiffs cannot determine, without hazard to themselves, to which of the defendants it belongs. This is sufficient to maintain a bill of interpleader, although the plaint-

iffs may have interests in other questions not relating to the specific fund."

The true basis for a bill of interpleader is thus correctly stated by the St. Louis Court of Appeals in Robards vs. Clayton, 49 Mo. Appeals, 610, 611:

"We have no statutory provisions governing the proceedings in equity upon a bill of interpleader, and hence are remitted to the rules of chancery courts to determine whether this bill is subject to general demurrer as not stating a cause of action. A bill of interpleader is ordinarily exhibited where two or more persons claim the same debt or duty, or other thing, from the plaintiff, by different or separate interests; and he, not knowing to which of the claimants he ought of right to render the same debt, duty or other thing, fears that he may suffer injury from their conflicting claims, and, therefore, he prays that they may be compelled to interplead and state their several claims, so that the court may adjudge to whom the same debt, duty or other thing belongs."

In Building Association vs. Joy, 56 Mo. Appeals, 433, there were two judgments at law, in courts of different jurisdiction, against the same property, in one of which the interpleader was a party defendant.

There were not only as above stated, two judgments at law, in different courts, on these conflicting claims, and one of these judgments rendered against the interpleader, but also an execution, a levy, and an advertisement of the property, which was the fund in dispute, for sale, by one of the claimants.

The Building Association, although it was judgment debtor, was also, as the plaintiff in error is, in the case at bar, an innocent and disinterested stakeholder.

The Building Association could not determine the question of priority between these conflicting claims, and was in danger of being compelled to pay the same debt twice.

The St. Louis Court of Appeals, in that case said:

"The respondent (the Building Association) thus placed between two fires, could not with safety pay the money to either party; no other course was open to it except the one pursued."

That course was a bill of interpleader filed by the Building Association, who was permitted to pay the fund into court.

The rival claimants were then directed to interplead, and the Building Association discharged.

From that ruling one of the claimants, Joy, appealed to the St. Louis Court of Appeals.

There, the ruling below was sustained.

So it is here;

The plaintiff in error here could not, and cannot, determine whether the Tourville judgment in Missouri, has priority over the Flannigan judgment in Illinois, or, *vice versa*.

No court has, as yet, passed upon that question. The opportunity to so determine that issue was never given to any court until this bill was filed.

The Circuit Court of the City of St. Louis, Missouri, can alone determine that question, because, for the first and only time during this entire litigation, the rival claimants to the fund in dispute have appeared together in that court.

If the plaintiff in error here is precluded from maintaining this bill because of the fact that the adverse claims to the fund in dispute have been reduced to judgment, in different jurisdictions, "foreign to each other," then, and for exactly the same reason, the Insurance Company was also precluded in the English case above cited, the Railway Company in the Alabama case cited, and the Building Association also, in the Missouri case determined in the St. Louis Court of Appeals.

The admitted facts stated in this bill are that there is but one fund sought to be reached by the two judgment claimants, each of whose judgments was obtained upon the theory that the respective plaintiff therein was entitled to the entire fund.

Immediately after the affirmance of the judgment in Missouri, the plaintiff in error, the holder of the fund in dispute, brought it into court by a bill of interpleader.

The plaintiff in the Illinois judgment (Flannigan) appeared to this bill, brought his judgment into court, submitted it to the jurisdiction of the court, and asked a determination of its priority over the judgment which had been obtained by Rule, assignee, in Missouri, who had been brought into court by valid process. The case then stood upon the bill of interpleader; the full and complete answer of the plaintiff in the Illinois judgment; and the return embodying the objections of Rule, the assignee of the Missouri judgment, which, in substance, seems to have been the claim that "the bill does not state facts sufficient to constitute a cause of action for the equitable relief prayed for therein." The party making this objection was validly in court by process.

The owner of the other judgment obtained in Illinois against the same fund, was validly in court by appearance duly entered, and by submission of the validity and priority of his judgment, in his answer to the bill of interpleader.

Upon this state of the pleadings and record the common debtor was clearly entitled to a judgment of the court of equity as to which of the two judgments should be satisfied by the application of the single fund.

The plaintiff in the bill of interpleader had the absolute right to a decree of the court ascertaining and defining the right of the plaintiff in the Illinois judgment as to the common fund; for that was the very question submitted to its jurisdiction by Flannigan, the Illinois judgment creditor, in his answer to the bill of inter-

pleader, and an adverse judgment upon that issue would have been pleadable against him in subsequent proceeding, and would have been a full protection to the plaintiff in the bill of interpleader for a subsequent payment of the judgment in favor of Rule, assignee.

For aught that appears in this record, the trial court might have rendered such a decree if it had proceeded (as it should have done) to a determination of the issues presented by the answer of the owner of the Illinois judgment.

Instead of doing this, the learned circuit judge seems to have reached the conclusion that he had no jurisdiction to grant the plaintiff in the bill of interpleader this relief, although the party against whom it might have been obtained was regularly before the court by appearance duly entered, answer filed, submitting the very question of his right to enforce his respective judgment against the common fund in the hands of the plaintiff in the bill of interpleader.

It is respectfully submitted that the learned chancellor below manifestly erred in not passing upon the question of the right of the plaintiff in error to relief against the Flannigan judgment.

Nor was Rule, the assignee of the Missouri judgment, in a position to complain of the act of the holder of the Illinois judgment, in voluntarily submitting the question of his rights thereunder to the decision of the courts of Missouri. If the Missouri judgment is entitled to priority of payment out of the common fund, the owner thereof could not be prejudiced by the act of the owner of the Illinois judgment in bringing it before the court and asking a determination of his rights thereunder. In any event, the plaintiff in the bill of interpleader was entitled to the protection of a decision in the court below against the enforceability of the Illinois judgment, in case the court below should decide that it could not be enforced against the common fund, because a valid judgment against that fund had been rendered by the courts of Missouri.

We respectfully submit that the summary action of the learned trial judge in disposing of this case without a trial of the issues validly joined therein, is without the support of precedent or reason. For even if the learned trial judge had taken the view that the Missouri judgment was impregnable to attack, he should have proceeded to adjudge the invalidity of the Illinois judgment, since that very question was validly submitted to him by the answer of its owner. This was a mere measure of justice to which the plaintiff in error was clearly entitled.

We, therefore, respectfully submit that upon principle as well as authority, the case should have proceeded to a hearing in the court below, instead of a dismissal of the bill as here complained of.

V.

The plaintiff in error has never been guilty of laches throughout this entire controversy.

It is intimated in the opinion of the learned appellate court, in the case at bar, that plaintiff in error here has been guilty of laches, in equity, or is subject to the application of the doctrine of *estoppel in pais*, because of the length of time in which this controversy has been pending in the courts of law in Illinois and Missouri.

But this view is erroneous, we think, for the following reasons:

First.—Because the defense of laches was not interposed by either of the defendants in this case, by answer, and, therefore, it cannot be either interposed or relied upon, for the first time, in an appellate court, by either of them.

Second.—Because the rights of the contending parties have not been impaired, their security diminished, nor their relative positions changed, during the pendency of this litigation.

Third.—Because the efforts of the plaintiff in error to escape the payment of the same debt twice, at law, do not amount, in equity, to laches.

1.

The Equity Rule.

The appellate court has, properly, we think, held that the allegations in the bill of interpleader here under review are to be taken *pro confesso*, by reason of the answer filed by Flannigan and the demurrer of Rule.

In this position the court is supported by both reason and authority.

Daniell's Chancery Practice (5th Edn.), Vol. 1, pp. 544, 850,

Story, Equity Jurisprudence (13th Edn.), Vol. 2, p. 1529.

The Rule Under the Missouri Code.

The Missouri Code of Practice has abolished all distinctions between the forms of legal and equitable defenses, and expressly provides that all defenses not specially pleaded are waived.

Rev. Stat. Mo. 1899, Vol. 1, Sec. 602, p. 253.

"Laches is an equitable defense, and there is no artificial, fixed or determinate rule on this subject, but each case as it arises must be decided according to its own particular circumstances."

Landrum vs. Bank, 63 Mo. 56.

"In the first place, there was no such point made in the answer, and nothing is better settled as a rule of pleading than that an *estoppel in pais* must be pleaded in order that advantage may be taken of it on trial of the issues.

Not only must the estoppel be pleaded, but this must be done with more certainty than is requisite or will suffice in ordinary defenses.

* * * * * * *

Nor does it matter that this is an equity case instead of one triable at law, since, in either case, no defense will be considered but which is embraced within the issues raised by the pleadings."

Bank vs. Doran, 109 Mo. 51-2.

And see, also, the Illinois rule:

Ziegler vs. Hughes, 55 Ill. 288;
O'Halloran vs. Fitzgerald, 71 Ill. 53.

Both Rule and Flannigan, therefore, have waived that defense, if it ever existed in this proceeding, by neither alleging nor proving it.

2.

Can laches be inferred from the mere fact that this controversy has been pending in a court of law, on the issue only as to the validity of these rival claims, but not their priority, for several years, without impairing the rights of said claimants in the slightest degree, and without altering their status in any particular?

This question has been twice answered in the negative by this court.

Endminger vs. Powers, 108 U. S. 292;
R. R. vs. Ry., 111 U. S. 520.

And, the same rule has been thus stated by the Supreme Court of Missouri:

"Mere delay or lapse of time, however, short of the statutory period, is not of itself, sufficient to constitute laches. *It must further appear that the other party has been injured by the delay.*"

Spurlock vs. Sproule, 72 Mo. 503;
Pike vs. Martindale, 91 Mo. 285;
Lindell vs. Lindell, 142 Mo. 79;
Wenderly vs. Lafayette Co., 150 Mo. 635.

It is amply supported by authority elsewhere.

12 Am. and Eng. Enc. Law, p. 544, and cases cited;
Nudd vs. Powers, 136 Mass. 273;
Gamble vs. Folsom, 49 Mich. 141;
Platt vs. Platt, 58 N. Y. 646.

And so here, the length of time in which both the Flannigan and the Tourville cases were pending, on appeal, in Illinois and Missouri, is of no consequence, and does not bar the plaintiff in error, in this proceeding, because, each of the claimants of this fund, Flannigan and Tourville, were severally, and vitally interested in the entire litigation, in both states, as well as in each of them, from the beginning to the end of it, and their respective interests were not affected, nor their status changed to their prejudice, in any way, during that whole period.

3.

Upon no equitable theory can it be held, in this proceeding, that the contest over the validity and *quantum* of the respective claims of Flannigan, and Tourville, at law, in separate states, and in foreign jurisdictions, precluded the plaintiff in error here, at the close of such contests of law, from filing this bill of interpleader, in equity, in order that *the priority of the two claims to the one fund might be determined.*

The litigation in the courts of law, in Illinois, and Missouri, was forced upon the plaintiff in error by Flannigan, and Tourville.

The plaintiff in error was, as this record shows, never idle during the entire period.

It never slept upon its rights, and there never was a moment from 1891 to 1900, when the plaintiff in error was not actively engaged, a part of the time simultaneously in both states, in defending itself against both of these rival claimants to the one fund in its hands.

And, in all of that time, as the record shows, the sole purpose of plaintiff in error, in thus attempting to interpose at law the pendency of the Missouri proceeding in the Illinois case, and the pendency of the Illinois proceeding in the Missouri case, was simply in order to avoid the payment of the same debt twice.

Again, the defense against the Flannigan case, by plaintiff in error, in Illinois, was made, as the record shows, in the interest of Tourville, as well as for itself.

And its defense in Missouri, of the Tourville case, was made also in the interest of Flannigan as well as for itself.

Flannigan and Tourville could both wait, as they did, until the cases at law were determined in their respective states, before appearing in the same jurisdiction, and each claiming the fund in a court of equity. Afterwards both claimants appeared before the chancellor, the one voluntarily, and the other after due service upon him of valid process, and both claimed priority to the same fund (one fund only), in the hands of plaintiff in error.

Flannigan, the Illinois creditor, is thus seeking to collect an undisputed debt, long due to him from Tourville, in that state, re-

gardless of the fact that plaintiff in error is in danger of being compelled to pay the same debt twice, once to Flannigan, and again to Rule, the assignee of Tourville.

Rule, the assignee of Tourville, is here attempting to compel plaintiff in error to pay the debt of Tourville to Flannigan, in Illinois, and the wages of Tourville to him, in Missouri, out of the one fund above described.

The length of time this triangular controversy has existed, is wholly immaterial, as, from any point of view, it cannot and ought not to be claimed that any laches can be imputed to the plaintiff in error, by reason of that situation.

Conclusion.

The amount involved in this controversy is not large, but the equitable principles at stake are of vital and public importance to the plaintiff in error, as well as to other employers of labor in many states who are in a similar situation.

The plaintiff in error, as this record discloses, owns and operates a line of railway extending through the states of Ohio, Michigan, Indiana, Illinois and Missouri.

It is a matter of common knowledge that it employs a large number of "all sorts and conditions of men."

This controversy was not of its seeking, but was forced upon it, by the manifest and declared intention of Tourville and his attorney, Rule, to compel it to pay the undisputed debt of Tourville to Flannigan, in Illinois, and the wages of Tourville, to himself, in Missouri, out of one and the same fund, or, in other words, to pay its debt to Tourville twice. (Tourville vs. Ry., 61 Mo. App. 531.)

Throughout this entire contest, both at law and in equity, the sole purpose of plaintiff in error has been, as it is now, to protect itself against the result above set forth. For that reason it endeavored unsuccessfully, at law, to interpose the Illinois suit as a defense to the Missouri proceeding and the Missouri suit as a defense to the Illinois proceeding.

As a last resort it attempted to bring the fund in dispute into a court of equity, there deposit it and let the chancellor determine which one of the rival claimants was entitled to it.

This could not have injured the defendant Rule, because, if, as he alleges, he is entitled to the fund by virtue of his priority, then he was sure to obtain it from the chancellor, and the same is equally true of Flannigan.

In lieu of that, although both claimants to the fund were in court, all relief was denied to plaintiff in error and its bill was dismissed for reasons, as we have shown, which cannot possibly commend themselves to a court of equity.

For, it is manifestly contrary to equity, as well to good conscience, to permit both Flannigan and Rule to collect their judgments out of one and the same fund from plaintiff in error, simply because such judgments were obtained in different states, and therefore "foreign to each other."

Courts of equity are organized to prevent the consummation of injustice like that, although such results are sometimes apparently unavoidable, in courts of law, even of last resort.

The equitable principle we are here contending for was, we think, expressly declared and enforced by this court and by the Supreme Court of Missouri, in the cases of

Ry. vs. Sturm, 174 U. S. 710;
Howland vs. Ry., 134 Mo. 474.

We therefore ask for a reversal of the judgment of the St. Louis Court of Appeals with directions to reinstate the bill of interpleader, to permit the plaintiff in error to deposit the fund in dispute in court; to be thence discharged with its costs; that the defendants, Flannigan and Rule, be required to interplead for said fund; and that their priorities thereto be determined.

Respectfully submitted,

WELLS H. BLODGETT,
GEORGE S. GROVER,
Attorneys for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

No. 115.

WABASH RAILROAD COMPANY,
Plaintiff in Error,
vs.
ALEXANDER FLANNIGAN AND VIRGIL RULE,
Defendants in Error.

IN ERROR TO THE ST. LOUIS COURT OF APPEALS OF THE STATE OF MISSOURI.

STATEMENT, POINTS AND BRIEF FOR DEFENDANT IN ERROR VIRGIL RULE.

STATEMENT.

Plaintiff in Error has devoted seven pages to a statement which is termed "A historical review of the undisputed facts." Many of the statements therein made are not true, but if they were true, they are not found in the Record in this case. A

just rebuke for trying to inject such a statement into this case is found in the opinion of the learned Judge of the St. Louis Court of Appeals, where he says (Rec. 38):

> "This history, while interesting as history, has no place in the Record beyond what is set forth in the bill for an interpleader, and what appears in the opinions of the appellate courts of this State to which the Tourville case was taken by successive appeals."

The pleadings, as far as they were made up, in this case consist of a Third Amended (substituted) Petition, a "Return" made under the Missouri Statute (Rec. 18) by Defendant Rule to a preliminary "Restraining Order, to show cause why a temporary injunction should not issue" (Rec. 17, erroneously designated "Temporary Injunction Granted"), and a "Motion for relief prayed for notwithstanding Return of Virgil Rule" (Rec. 21).

From these, and the opinions of the appellate courts to which the Tourville case was taken by successive appeals, it appears that on June 3rd, 1891, Defendant Flannigan instituted a garnishment proceeding against the Wabash Railroad Company, of Illinois, before a Justice at East St. Louis, to impound the wages of Peter Tourville. He obtained judgment in that proceeding, and said judgment was paid by the Wabash Company. (Wabash v. Tourville, 179 U. S. 32; Trans. Rec. No. 17350, U. S. Sup. Ct. 6.)

On June 10th, 1891, Tourville sued the Wabash Company of Missouri at St. Louis in Missouri, for his wages earned and payable only in that State, and obtained a judgment for $81.00 against said Com-

pany. Defendant Flannigan's Illinois judgment was pleaded in the Missouri court in bar to the Tourville judgment, but was not allowed (Tourville v. Wabash, 61 Mo. App. 527; Trans. Rec. No. 17350, U. S. Sup. Ct. 6).

The Tourville judgment was rendered on March 25th, 1895, by the St. Louis Court of Appeals. This was a final judgment and was never appealed. Thereafter Defendant Flannigan began a Second Garnishment Proceedings in Illinois, and on June 14th, 1895, obtained a second judgment for the same debt, before the same Court, against the Wabash Company, without opposition by that Company, notwithstanding the payment by said Company of the former judgment in the first garnishment proceedings (Rec. No. 17350, *supra*). This latter judgment obtained more than eight years ago Defendant Flannigan has made no effort to collect. Notwithstanding the Wabash Company of Illinois is solvent, no execution has been sued out on the judgment.

While Flannigan has made no effort to collect the judgment had in his Second Garnishment Proceedings, it was set up by the Wabash Company, as a defense, in bar, to the Tourville judgment in Missouri, and Tourville's rights under said judgment and its priority over the Flannigan judgment and the priorities and respective rights of all the parties to this Bill have been finally, fully and fairly adjudicated, at law, as shown in Defendants' bill of interpleader (Rec. 3–6), and by the opinions of the appellate courts to which the Tourville case was taken by successive appeals (Return of Defendant Rule, Rec. 18–20; Wabash v. Tourville, *supra*; Tourville v. Wabash, 128 Mo. 322; 61 Mo. App. 527).

After the Missouri courts, and this Court, had determined the validity and priority of the Tourville judgment as against the Flannigan judgment; after the Wabash had contested the validity and priority of these judgments in litigation covering ten years, which was finally settled in this Court (Wabash v. Tourville, *supra*), it was not satisfied with the judgment of this Court, and sought to have a *nisi prius* court in Missouri again adjudicate the priority of said judgments by this so-called bill of interpleader.

Defendant Rule is the assignee of the Tourville judgment. The bill asks that an injunction issue against Defendants Rule and Flannigan, restraining Rule from enforcing the collection of the Tourville judgment, and Flannigan from the collection of his judgment in the Second Garnishment Proceedings. Flannigan, though a resident and citizen of the State of Illinois, and out of the jurisdiction of the *nisi prius* court in Missouri, filed his voluntary appearance in the Missouri court, authorizing H. W. Blodgett, the son of the Vice-President and General Solicitor of the Wabash Company, to represent him in the attempted interpleader brought by that Company (Rec. 13, erroneously designated as voluntary appearance of Defendant Rule).

Upon the filing of the Third Amended (substituted) Petition April 15th, 1903, the Court issued an "**Order**" against Defendants Flannigan and Rule directing them to show cause on April 19th "why a temporary injunction should not be issued, and the relief prayed for in the Third Amended Petition should not be granted." Pending a hearing of said "**Order**" the Court issued a **Temporary Restraining Order** against both

of the Defendants (See Order Rec. 17, erroneously designated as "Temporary Injunction granted").

The sheriff served a copy of the "Order" on Defendant Rule, and at the time specified therein, Rule filed his "Return" under the Missouri Statute, to said Order (Rec. 18).

On April 22nd, 1901, the substituted plaintiff filed a motion which in effect admits the facts stated in the Return of Defendant Rule set forth on pages 18–20 of the Record. This motion is designated "Motion for relief prayed for notwithstanding Return of Virgil Rule" (Rec. 21).

Defendant Flannigan, being out of the jurisdiction of the Court, was not served with this Order (See Sheriff's Return Rec. 26), and he did not appear or make any return thereto, and the Court, upon the hearing at the time designated in the Order, took the matter under advisement, and, on **Monday, April 29th, 1901**, made a preliminary interlocutory finding on page 1 of the Record, from which the appeal herein was taken. The Order issued by the Court as to Defendant Flannigan was wholly without effect, as would have been any Order against him, he being out of the jurisdiction of the Court, and this fact was brought forcibly before the *nisi prius* court by reason of his having totally disregarded the order.

Four petitions were filed in the case. In the original, plaintiff was alleged to be a corporation organized under the laws of **Missouri and Illinois** (Rec. 25). In the three so-called amended petitions, plaintiff was alleged to be an **Ohio** corporation (Rec. 26). Defendant Rule was never served with any process issued at the instance of the Ohio corporate individual, and

he never appeared to any of the three so-called amended, in fact substituted petitions, except for the sole purpose of moving to strike them from the files. The Court sustained the motion to strike the first two from the files (Rec. 25–26), but the motion to strike the third from the files has never been passed upon because of the premature appeal (Rec. 26).

The only hearing was upon the preliminary "Restraining Order" issued April 15th and passed upon April 29th, 1901, commanding the defendants to show cause why a temporary injunction should not be granted against them. The prayer in the plaintiff's Bill, as to that Order was denied, and the Restraining Order granted against the defendants on April 15th was dissolved. (Rec. 1 and 27.)

Plaintiff did not prosecute its suit to a final determination, but appealed from the action of the Court on this preliminary Restraining Order, to the St. Louis Court of Appeals. That Court affirmed the action of the *nisi prius* court. After the judgment plaintiff made applications to the presiding Judge of the St. Louis Court of Appeals to have the case transferred, first, to the Supreme Court of Missouri, then to this court. These applications were denied because the questions sought to be raised in the bill were *res adjudicata*. (See opinion on denial of application Rec. 42.) Thereafter application was made to the Honorable David J. Brewer, Associate Justice of this court, and the writ was issued bringing the case here.

POINTS.

I.

(*a*) The decision of the St. Louis Court of Appeals was upon the ground that all the parties to the bill of interpleader had had their day in court, and that the questions raised were *res adjudicata*. This is not a federal question and this court is, therefore, without jurisdiction.

Northern Pac. v. Ellis, 144 U. S. 464;
Hammond v. Johnson, 142 U. S. 73;
Hickman v. Fort Scott, 141 U. S. 415;
Chaffin v. Taylor, 116 U. S. 367;
Clark v. Keith, 106 U. S. 464;
Peck v. Sanderson, 18 How. 42.

(*b*) In order to give this Court power to revise the judgment of a State Court it must appear upon the transcript that the constitutional question was raised by the pleadings and decided against plaintiff in error.

Oxley v. Butler Co., 166 U. S. 657-8;
Hoydt v. Sheldon, 1 Black 518-21;
Maxwell v. Newbold, 18 How. 511.

(*c*) This Court will not review the judgment of a State court except upon the decree of the highest court in the State.

Rev. Stat. U. S., Sec. 709;
Farnsworth v. Montana, 129 U. S. 104;
Desty's Fed. Proc., Sec. 223.

(*d*) The Supreme Court of Missouri is the highest court in that State having jurisdiction in constitutional questions.

Constitution of Mo., Art. 6, Sec. 12;

State v. St. Louis Ct. of App., 97 Mo. 296–9;
State v. Caldwell, 57 Mo. App. 447;
In re Essex, 44 Mo. App. 289.

II.

The bill of interpleader does not state facts sufficient to constitute a cause of action against defendants, for the following reasons:

(*a*) It is essential to a bill of interpleader that the plaintiff shall make known his condition as a stakeholder by bringing a suit within a reasonable time after being advised of the double claims against him. It appears from the bill that plaintiff has been contesting this claim (now merged into the judgment of Defendant Rule) since June 10, 1891, with full knowledge of the claim of Defendant Flannigan.

Opinion, this Case, Rec. 39;
Cheever v. Hodgson, 9 Mo. App. 565;
Dodds v. Gregory, 61 Miss. 351;
McDevitt v. Sullivan, 8 Cal. 592;
Union Bank v. Kerr, 2 Md. Ch. 460;
Ency. P. & P., 462 k;
Barnes v. Bamberger, 196 Pa. St. 123;
Brackett v. Graves, 51 N. Y. S. Rep. 895.

(*b*) It is an essential to a bill of interpleader that the right of either defendant to the fund should not have been previously determined by a judgment at law against the plaintiff.

Cheever v. Hodgson, 9 Mo. App. 565;
McKinney v. Kuhn, 59 Miss. 186.
Ency. P. & P. 462;
Risher v. Roush 2 Mo. 95;
French v. Robrehard, 5 Vt. 43;
Holmes v. Clark, 46 Vt. 22;
Mitchell v. N. W. Mfg. Co., 26 Ill. App. 295;
Carroll v. Parks, 1 Baxt. 269;

Dodds v. Gregory, 61 Miss. 351;
Yarborough v. Thompson, B. S. & M. 291;
Haseltine v. Brickley, 16 Gratt. 116;
Cornish v. Tanner, 1 Young & J. 333;
Prov. Ins. Co. v. White, 115 Mass. 112; 103 Mass. 573.

(c) A bill of interpleader must show that the plaintiff is ignorant of the rights of the parties who are called upon to interplead.

Ency. P. & P. 465, n. 2;
Barker v. Barker, 42 N. H. 78;
Shaw v. Coster, 8 Paige 339;
Morgan v. Fillmore, 18 Abb. Pr. 219;
Mohawk, Etc., R. Co. v. Chute, 4 Paige 384;
Pfister v. Wade, 56 Cal. 43;
Illingworth v. Rowe, 52 N. J. Eq. 360;
Trigg v. Hitz, 17 Abb. Pr. 436;
Del., Etc., R. R. Co. v. Corwith, 16 Civ. Pro. Rch. (N. Y.) 312;
Heckmer v. Gilligan, 28 W. Va. 750.

(d) A judgment debt of one jurisdiction is not subject to a bill of interpleader in another jurisdiction.

Crane v. McDonald, 118 N. Y. 657;
Snodgrass v. Butler, 54 Miss. 45;
Fulton v. Chase, 6 N. Y. Supp. 126;
Gibson v. Goldwaite, 7 Ala. 281;
Stone v. Reed, 152 Mass. 179;
Boston, Etc., v. Skillings, 132 Mass. 418;
Fairbanks v. Bilknap, 135 Mass. 179;
Kyle v. Mary Lee Coal Co., 112 Ala. 606;
Morristown v. Binnings, 26 N. J. Eq. 345;
Bartlett v. Sutton, 23 F. R. 257.

III.

(a) The Circuit Court had no power to enforce its judgment against the person of Defendant Flannigan, hence a temporary injunction as against him would

have been wholly without effect, unless he chose to obey it.

R. S. Mo. 1899, Sec. 598, Point II, *d;*
Sheedy v. Second Nat'l Bank, 62 Mo. 17.

(*b*) The Missouri court would have no power to decree that the judgment of the Illinois court was void or that it was not void.

Carpenter v. Strange, 141 U. S. 88.

IV.

(*a*) A court of one jurisdiction cannot enjoin the collection of a judgment of another court of competent jurisdiction, in the absence of any allegation of fraud in obtaining such judgment.

Scrutchfield v. Souter, 119 Mo. 621;
Nelson v. Brown, 23 Mo. 13;
Keith v. Plemmons, 28 Mo. 104;
Pettus v. Elgin, 11 Mo. 411;
Mellier v. Bartlett, 89 Mo. 137.

(*b*) The various divisions of the Circuit Court of the City of St. Louis have a separate jurisdiction.

Haehl v. Wabash R. Co., 119 Mo. 325;
State *ex rel.* v. Eggers, 152 Mo. 487.

V.

(*a*) There is an indisputable legal presumption that a corporation is a citizen, or composed of citizens of the State which created it.

St. L. & S. F. R. Co. v. James, 161 U. S. 545;
St. Joseph R. Co. v. Steele, 167 U. S. 659;
Burrows Co. v. Cane, 170 U. S. 100;
New Albany R. Co. v. Louisville Co., 174 U. S. 552.

(*b*) The Wabash Railroad Company of Ohio, the substituted plaintiff in the amended petitions, being a citizen, or legal entity, owing its existence to the laws of the State of Ohio, is not the corporate individual which instituted this suit, and one individual cannot prosecute a suit instituted by another of the same name.

Tourville v. Wabash R. Co., 148 Mo. 614;
Nashau R. Co. v. Lowell R. Co., 136 U. S. 356;
Rev. Stat. Mo. 1899, Sec. 566;
Hall v. School Dist., 36 Mo. App. 23.

VI.

The temporary injunction was properly denied, because there was at the time, and is now, another suit pending between the same parties for the same purpose in another court in the State of Missouri.

R. S. Mo. 1899, Sec. 598.

VII.

Under the Missouri law no appeal lies from an order of Court dissolving a temporary injunction (*a*), or refusing to grant an injunction (*b*), or refusing to appoint a receiver (*c*), or from an order overruling or sustaining a demurrer (*d*), or from any order or decision not specified in the statute regulating the taking of appeals (*e*). The right to an appeal is purely statutory; there is no vested right therein (*f*).

(*a*) Richards v. Johnson, 34 Mo. App. 83;
(*b*) Harrison v. Rush, 15 Mo. 175;
(*c*) State *ex rel.* v. Hirzel, 137 Mo. 445–6;
St. Louis, Etc. R. Co. v. Wear, 135 Mo. 230;
(*d*) Palmer v. Crane, 8 Mo. 619;
Robinson v. County Ct., 32 Mo. 428;
Berry v. Zimmerman, 43 Mo. 215;

Spears v. Bond, 79 Mo. 467;
(*e*) Voorhis v. Western Union, 59 Mo. App. 55;
Russell v. St. Louis, Etc. R. Co., 154 Mo. 431;
(*f*) State *ex rel.* v. Woodson, 128 Mo. 497;
Schuster v. Weiss, 114 Mo. 158;
In re Bauer, 112 Mo. 231.

ARGUMENT.

I.

There is no constitutional question in this case. But if there was, in order to give this Court power to revise the judgment of the State Court, on that ground, it must appear upon the transcript that the point was raised in the State Court and **decided against Plaintiff in Error.** (Oxley v. Butler Co., 166 U. S. 657–8, and cases cited.)

It is true in this case, as in the Oxley case: "All the matters put in issue by the bill and answer, and decided by the State Court, were questions which depended for their decision upon principles of law and equity as recognized and administered in the State of Missouri, and without reference to the construction of any provision in the Constitution." In the motion for a rehearing in the *nisi prius* court, and upon the application made to the St. Louis Court of Appeals to transfer to the Supreme Court, it was stated by appellant that there was a constitutional question involved. That point was not raised until **after judgment,** and the Court of Appeals having decided the case upon a ground broad enough to maintain the judgment without considering the so-called constitutional question, refused to consider it, **first,** because such question upon the face of the Bill was

res adjudicata, and, **second**, because not "specially set up and claimed until after judgment."

The application made to the presiding Judge of that Court for a Writ of Error to this Court, was denied in the following opinion:

> **"In Wabash v. Tourville, 179 U. S. 322, the judgment herein involved came under review. The validity of the Tourville judgment, as we understand the opinion, was sustained and its priority over that of Flannigan was adjudged. In the face of this decision we deny the writ."** (Rec. 42.)

And the opinion of that Court concluded with the following:

> **"Appellant (Plaintiff in Error here) has had its day and opportunity in court to make its defense to both the claims. It defended the Tourville suit, but, for aught that appears in the bill of interpleader and in the pleadings, the defense it might have successfully made as garnishee in the Flannigan suit it did not make and it is too late now to require Rule, the assignee of Tourville, to come into a court of equity and interplead for a debt that has been reduced to a final judgment and to show his superior claim by showing priority of suit and priority of judgment over the Flannigan judgment, which the appellant might have done as garnishee as a bar to that suit. It may be that under the ruling of Allen v. Watt, 79 Ill. 284, the appellant, after paying the Tourville judgment, may successfully enjoin the collection of the Flannigan judgment in the courts of Illinois, but we are clearly of the opinion that it is not entitled to the relief prayed for."** (Rec. 40.)

It is thus clear that the decision of the St. Louis Court of Appeals is upon a ground not involving any federal question, and that ground is broad enough to maintain the judgment. Such being the case this Court is without jurisdiction, and the St. Louis Court of Appeals was right in denying the Writ of Error. **Northern Pacific v. Ellis, 144 U. S. 464, and cases there cited.**

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This Court is without jurisdiction to hear and determine this controversy, because the St. Louis Court of Appeals is not the highest court in that State.

The case is brought here under authority of Rev. Stats. U. S. Sec. 709, and under that statute this Court will not review the judgment of a State court, **except upon the decree of the highest court in the State. Farnsworth v. Montana, 129 U. S. 104.** The Constitution of the State of Missouri fixing the jurisdiction of the St. Louis Court of Appeals, from which court this suit was brought here, provides:

> "Appeals shall lie from the decisions of the St. Louis Court of Appeals to the Supreme Court, and writs of error may issue from the Supreme Court to said court in the following cases **only:** * * * **In cases involving the construction of the Constitution of the United States or of this State.**" (Const. Mo. Art. 6, Sec. 12.)

The Missouri Courts in construing that section of the Constitution have universally held that the Supreme Court of Missouri is the highest and only court in that State having jurisdiction over Constitutional questions, and when the Point is raised in the St. Louis Court of Appeals before judgment, that court must transfer the case to the Supreme Court (cases Point I) **even though the raising of the question is a mere sham.** *In re* **Essex, 44 Mo. App. 288.**

II.

The Third Substituted Petition does not state facts sufficient to constitute a cause of action for the final equitable relief therein prayed for, for the following reasons:

There is no principle better settled than that a litigant cannot fight his case in a court of law and when

defeated there ask relief of a court of equity—except upon **fraud or mistake.** Plaintiff admits (Brief 22) "it endeavored unsuccessfully, at law, to interpose the Illinois suit as a defense to the Missouri proceeding" and now asks the same relief in a court of equity, and we suppose will again want to return to a law court when defeated in equity.

(*a*) It appears on the face of the bill that plaintiff has been contesting the right of Tourville to obtain the judgment at Law (the collection of which is now sought to be enjoined) since June 10th, 1891. It is essential to a bill of interpleader that the plaintiff shall make known his condition as a stakeholder by bringing suit within a reasonable time after being advised of the double claim against the fund. (Point II, *a.*)

(*b*) It is partly upon the foregoing principle that, in a bill of interpleader, the right of either defendant to the fund should not have been previously determined by a judgment at law against the plaintiff. (Point II, *b.*)

The principle is pertinently stated in a recent case as follows:

> "It is well settled both by reason and authority that one who asks the interposition of a court of equity to compel others claiming property in his hands, to interplead, **must do so before putting them to the test of trials at law.** The remedy by interpleader is to afford protection to a party from the annoyance and hazard of two or more actions touching the same property or demand; but one who with knowledge of all the facts, neglects to avail himself of the relief, or elects to take the chances for success in the actions at law, ought to submit to the consequences of defeat. **To per-**

mit an unsuccessful defendant to compel the successful plaintiffs to interplead, is to increase instead of diminish the number of suits; to put upon the shoulders of others the burden which he asks may be taken from his own." McKinney v. Kuhn, 59 Miss. 186.

It appears upon the face of the Third Amended Petition that plaintiff, being cognizant of both the claims of Flannigan and Tourville, submitted its case to a court of law, and it is a well settled principle of equitable jurisprudence that if a party has submitted his case to a court of law, and the court had jurisdiction to adjudicate thereon, he is by such adjudication precluded from any relief in equity. **Risher v. Roush, 2 Mo. 95.**

Our Missouri Court has stated the rule in the following language:

> "A bill of interpleader is the appropriate remedy where different claimants threaten, or have begun suits, and the one in possession of the fund, disclaiming any right to retain it and admitting that it belongs to one or other of the claimants, but not knowing to which it ought to be paid, asks the intervention of a court, that he may not run the risk of paying twice. But the theory is that the rights of the claimants are not not known; **after those rights have been passed upon, and there is a judgment as to those rights, it does not appear how a court of equity can interfere on the footing of a bill of interpleader. The complainant should have filed his bill before judgment." Cheever v. Hodgson, 9 Mo. App. 568.**

(*c*) A bill of interpleader must show that plaintiff is ignorant of the rights of the parties who are called upon to interplead, while the Third Substituted Petition shows plaintiff to have been entirely cognizant of the rights of defendants. In the language of a recent writer, "being thus of the requisite knowledge

it devolved upon himself to determine to which of the claimants he would pay." The office of the bill of interpleader is not to protect any party against double liability, but against double vexation in respect to one liability. Enc. P. & P. 459 *g*.

(*d*) Also, the debt of Flannigan is a judgment debt of the jurisdiction of Illinois, and it is a well settled principle of equitable jurisprudence that a judgment debt in one jurisdiction is not subject to a bill of interpleader in another jurisdiction. (Point II, *d*.)

The reason upon which this rule is founded is because the cause of action "loses its vitality;" it is no longer a mere claim or lien, it is a final judgment not subject to be impounded as a debt in another court. This Court in the former adjudication of this same case, in speaking of the judgment of the Missouri Court, states the rule thus:

> "One of the effects of that judgment was to merge the cause of action, the debt sued for into the judgment, 'it was drowned in the judgment.' It thereby 'lost its vitality' aud 'all its power to sustain rights and enforce liabilities terminated in the judgment.' **On March 26, 1895, the old debt of the company to the plaintiff ceased to exist,** and thereafter could not sustain any liability imposed thereon by the subsequent garnishment proceedings."
>
> Wabash v. Tourville, 179 U. S. 326.

The Tourville debt "lost its vitality" in his judgment. That judgment a final one now belongs to Rule. It cannot be brought into court now, after twelve years of litigation, after it has ripened into a judgment, and be made the subject of interpleader. It is not any longer the debt due Tourville. It is no

longer a fund in plaintiff's hands, it is a judgment, and "all its power to sustain rights terminated when it became a judgment."

III.

The Circuit Court had no jurisdiction over Defendant Flannigan, and could not enforce its decree against him. It appears from the Third Substituted Petition that Flannigan is a resident and citizen of the State of Illinois. If the Missouri Court should have granted an injunction and he should have violated it that Court would be wholly without power to send into Illinois and bring him into its jurisdiction for the purpose of punishing him for contempt. This fact was brought forcibly before the Missouri *nisi prius* court, by reason of the fact, that the sheriff could not serve Flannigan with the "Order to Show Cause," of April 15th, 1901, and of Flannigan wholly disregarding the Order, and failing to make any Return, thereto. One of the grounds for a demurrer under the Missouri Statute, is, that the Court has no jurisdiction over the person of a defendant. **R. S. Mo. 1899, Sec. 598.** It is partly upon this principle that a judgment debt of one jurisdiction is not subject to interpleader in another jurisdiction (Point II, *d*). A non-resident cannot be compelled to interplead (**Sheedy v. Second Nat'l Bank, 62 Mo. 17**), and the Missouri Court would have no power to decree that the judgment of the Illinois Court was void or not void. Carpenter v. Strange, 141 U. S. 87.

IV.

It appeared from the third substituted petition that it was an attempt to have one *nisi prius* court en-

join the collection of a judgment of another *nisi prius* court of competent jurisdiction. In the case of **State *ex rel.* v. Eggers, 152 Mo. 487,** and in **Haehl v. Wabash, 119 Mo. 325,** it was **held,** that the different divisions of the Circuit Court of the City of St. Louis **were courts of separate jurisdiction,** and that one division had no more jurisdiction over a case in another division, than the Circuit Court of an adjoining county would have. The language of the Supreme Court was as follows:

> "When a case is regularly assigned to a particular division, that division, for the purpose of that case, is as exclusive in its jurisdiction as if it were the whole court, or as if the court was a unit; **another division** * * * has no more **jurisdiction over that case than the Circuit Court of an adjoining county."**

The execution which the substituted plaintiff seeks to have enjoined, in so far as Rule is concerned, is an execution upon a judgment of Division No. 3 of the Circuit Court, City of St. Louis, to-wit: the judgment in the case of Tourville v. Wabash, Case No. 85743, Div. No. 3, set out in said petition. That judgment has the sanction of said Court, of the St. Louis Court of Appeals, of the Supreme Court of Missouri, and the Supreme Court of the United States. (Tourville v. Wabash, 179 U. S. 322; s. c. 148 Mo. 614; s. c. 61 Mo. App. 527.) **It is not claimed that the judgment in that case was fraudulently obtained.** What a travesty upon justice it would have been for the *nisi prius* court to have assumed the power to enjoin the collection of **such a judgment** in another *nisi prius* court, over the process of which it had no control, and where it is not claimed the judgment was fraudulently obtained.

In **Scrutchfield v. Souter, 119 Mo. 621,** the Supreme Court of Missouri held that the Court from which the exe-

cution was issued, under the general law and statute, **has the exclusive right to control it and no other Court has a right to interfere.**

The same rule has been expressed in another case, as follows:

> "The general rule undoubtedly is that every court has the exclusive control of its process, and no other court has a right to interfere with or control it. Hence, an injunction cannot be issued from another court." Mellier v. Bartlett, *supra*.

V.

This defendant has not entered his voluntary appearance to any proceeding brought by the Wabash Company of **Ohio**, has not been summoned or brought into court upon any process sued out by that corporation, and has not waived the suing out of such process.

The manner of instituting suits in Missouri is found in R. S. 1899, Sec. 566:

> "It is, **first**, by filing in the office of the clerk of the proper court, a petition setting forth plaintiff's cause of action, and the remedy sought, and by the voluntary appearance of the adverse party thereto; or, **second**, by filing such petition in such office, and suing out thereon a writ of summons against the person or of attachment against the property of the defendant."

In this case the Wabash Company of **Ohio**, has not complied with the above statute. There is no provision of law for substituting John Smith of Ohio, as a party plaintiff in the place and stead of John Smith of Missouri; nor is there any provision for the substitution of an Ohio corporation as a party plaintiff

in the place and stead of a Missouri corporation by the same name.

The plaintiff in the original petition filed in this case alleged that it was "a corporation duly organized under the laws of Missouri and Illinois." (Rec. 11.) The plaintiff in the First and Second Substituted Petitions was a corporation "duly organized under the laws of the State of Ohio." (Rec. 14.) The plaintiff in the Third Substituted Petition was a corporation "first organized as such in the State of **Ohio**, and subsequently organized as such in the States of Illinois and Missouri, and duly organized as a consolidated corporation under the laws of the States of Ohio, Illinois and Missouri." (Rec. 3).

The Supreme Court of the United States in St. L. & S. F. R. Co. v. James, 161 U. S. 545 (followed in cases Point I, *b*), **held**, that there is an **indisputable legal presumption that a State corporation**, when sued or suing in a Circuit Court of the United States **is composed of citizens of the State which created it.**

If there an "indisputable legal presumption" that the corporation that instituted this suit is composed of citizens of Missouri, and that the corporation that filed the Third Substituted Petition is composed of citizens of Ohio, as above stated, then here there is a substitution of a different party plaintiff, without due process of law, against this defendant, for this defendant has not entered his voluntary appearance thereto, and has not been served by any Process sued out by the Ohio corporation, the plaintiff in the Third Substituded Petition.

In the litigation, of which this suit is a part, it was agreed that the Wabash Railroad Company was "a

consolidated corporation **separately** organized under the laws of Michigan, Ohio, Indiana, Illinois and Missouri;" and in an opinion by the Supreme Court of Missouri, which has since been approved by this Court, in construing the legal status of the various corporations organized under the laws of said States by the name of Wabash Railroad Company, said:

> "The defendant in this case has a separate and independent corporate existence both in this State and in the State of Illinois. 'Railroad corporations created by two or more States, though joined in their interests in the operation of their roads, in the issue of their stock, and in the division of their profits, so as practically to be a single corporation, do not lose their identity, but each has its existence and its standing in the courts of the country only by virtue of the legislation by which it was created, and the union of name, of officers, of business, and of property does not change their distinctive character as separate corporations.' **Nashau R. Co. v. Lowell R. Co., 136 U. S. 356.** So that in the defendant we have two legal entities, one a corporation and citizen of Illinois, the other a corporation and citizen of Missouri. With the former the plaintiff had no dealings and it owed him nothing. The latter became indebted to him in the sum of $81 for wages earned in Missouri, and under the laws thereof exempt from attachment, execution and garnishment; and while it may be difficult to see how this debt due the plaintiff from the Wabash Railroad Company of Missouri could be impounded in the courts of Illinois by the service of garnishment process on the Wabash Railroad Company of Illinois, the ruling of the Court of Appeals was not based upon the ground that it was not so subject." Tourville v. Wabash, 148 Mo. 614; s. c. 179 U. S. 323.

So we say that in the attempted substitution of a party plaintiff other than the one named in the orig-

inal petition there has been a departure as to the party plaintiff, and the Ohio corporation was not properly before the Circuit Court, and that court was wholly without jurisdiction, because no process of law has been issued against this defendant at the instance of the Ohio corporation.

VI.

Referring to the second paragraph of the Return of Defendant Rule to the Order of April 15th, 1901 (Rec. 18), plaintiff cannot maintain his prayer for a temporary injunction in this case, because in Case No. 68 to the June Term, 1901, of the St. Louis Circuit Court, City of St. Louis, under the style of "Wabash Railroad Company v. Virgil Rule, assignee of Peter Tourville," the purpose of the bill is to enjoin and restrain said Rule from the collection of his judgment until the termination of this suit. That a party cannot maintain his suit when there is another action pending between the same parties for the same cause of action in another court of the State of Missouri, is a statutory ground for demurrer to the bill. R. S. Mo. 1899, Sec. 598.

VII.

The appeal in this case was prematurely taken. The record of April 29th, 1901, that is, **the judgment appealed from,** is the

> **"Order of April 15th, 1901, commanding the defendants to show cause why a temporary injunction should not be granted against them, coming on for hearing upon the pleadings, affidavits and proofs adduced, and the Court having duly considered the same, and now being sufficiently advised of and concerning the premises, doth order that the prayer of plaintiff's bill be and is denied. It is further ordered**

by the Court that the restraining order granted against defendants on April 15th, 1901, be and is hereby dissolved." (Rec. 1.)

The substituted plaintiff's Third Petition was not dismissed by the foregoing finding, and defendant Rule's motion to strike out the Third Amended Petition has not been passed upon. The only question that came on for hearing on April 29th, 1901, and the only question that was considered by the Court "upon the pleadings, affidavits and proofs adduced," was, as shown by the record entry of that day, the preliminary **order of April 15th, 1901, commanding the defendants to show cause why a temporary injunction should not be granted against them."** The prayer of plaintiff's bill which was, in fact, denied, and according to the record, was that embraced in the order to show cause, etc.

The substituted plaintiff, on April 30th, 1901, the next day after the Court had passed upon the "order of April 15th, 1901," filed a motion, which motion was designated on the back "Motion for Rehearing," but according to the language of the motion, was a motion (Rec. 23) **"to set aside the order of April 29th, 1901,** and grant it a rehearing in said cause," which motion was by the Court overruled, and from the action of the Court in overruling that motion, that is the motion to set aside the order of April 29th, an appeal was taken to this Court.

The Missouri statute allows an appeal from an order "dissolving an injunction," but just as in the case of a receiver not from an order **refusing to grant a temporary injunction and dissolving a mere restraining order** made pending the hearing of an order to "show cause why a temporary injunction should not issue." The right to an appeal is not a vested right, it is purely statu-

tory. (Point VI, *g*.) The return of Defendant Rule is in part in the nature of a demurrer, but no appeal lies from an order, sustaining a demurrer until after a final judgment of dismissal (Point VI, *c*).

On April 29th, Defendant Rule, appearing for the purposes of the motion only, filed a motion to strike out or dismiss the Third Amended Petition, and that motion is still pending and undisposed of, because of the premature appeal (Rec. 26). The plaintiff is not out of court and out to stay, as insisted in its brief. The right to have the defendants interplead was not determined by the order of **April 29th, 1901.**

IN CONCLUSION.

In 1891, Peter Tourville worked for the Wabash Railroad Company of Missouri, Flannigan sought to impound his wages (which were exempt from execution under the laws of Missouri) by garnishment proceedings in Illinois against a corporation of that State, united in its interests with the corporation of Missouri. Said wages being exempt in Missouri were also exempt under the laws of Illinois then in force (2 Starr, and C., Ills. Stat. Ch. 52, Sec. 22).

More than twelve years ago plaintiff became possessed of knowledge of the respective claims of Flannigan and Tourville to what was then a fund in its hands as a mere stakeholder, but which has since become a judgment debt, now owned by Virgil Rule, this defendant. It then and there devolved upon plaintiff to determine which of the claimants it would pay, or else then and there bring its bill of interpleader asking to have its rival claimants interplead for the fund.

The Justice of the Peace, attorney for the Missouri

company, "the only company that was ever indebted to Tourville," chose to pay the Illinois claimant and fight the Missouri claimant, instead of bringing a bill of interpleader. Said attorney decided upon the course his company would pursue, and every court in the country, from James McCaffrey, Justice of the Peace, to the highest tribunal in the land, has said he was wrong. In 1895 Flannigan, to whom the $81.00 that had been in controversy had been once paid under execution, was permitted to obtain another judgment for the same fund, in the same court, without opposition upon that ground. He has had that judgment for over eight years, in Illinois, against a perfectly solvent Illinois company and made no attempt to collect it. It was an absolute and undisputed defense to obtaining that judgment, that the same fund had been once before impounded in that court and paid under execution issued out of that court. It was an absolute defense to that case that Tourville had a prior judgment in Missouri and the debt had changed from being a fund to a judgment. But said attorney was bent on defeating the prior Tourville judgment, and needed a judgment, as he supposed, against the Wabosh, with which to defeat the judgment of Tourville. Aided by the Wabash, in not interposing these defenses, Flannigan obtained a second judgment for the same debt, but never has had an execution issued thereon. The Missouri company has interposed that judgment as a defense, on a motion to quash the execution issued on the judgment in Missouri, and this Court and the Missouri Courts have decided against it. It is alleged that Flannigan is now trying to enforce his judgment, and he appoints the son of the General

Solicitor and Vice-President of the Wabash Company (whose name is signed to its brief in this court) his true and lawful attorney (Rec. 13 erroneously designated as "voluntary appearance of Defendant Rule") to represent him in a court of equity in an attempt to again prevent the collection of the Tourville judgment, now owned by this defendant. Flannigan cannot be compelled to interplead in the State of Missouri, but he comes into that State, at least very closely allied with plaintiff, and, admitting all the facts of plaintiff's bill wants a court of equity to award him another judgment. Would a judgment in Missouri be any better than the one he obtained in Illinois, in 1895? The plaintiff says Flannigan has a valid judgment against it in Illinois; if the allegation be true, he could have collected it eight years ago. We say therefore that upon the face of the bill, it is not intended to be an interpleader, because the priorities of the two judgments have already been adjudicated, at law, and the court where the bill is brought could not enforce its decree against Flannigan. The only purpose of the so-called interpleader is an attempt to obtain an injunction against Rule. The bill is a sham upon its face. There is no disputed principle sought to be settled by bringing this Eighty Dollar suit a second time to this court. There is no equity in the bill, there is no federal question involved, this Court is without jurisdiction. The writ of error should therefore be dismissed and the judgment affirmed.

JOHN D. JOHNSON and
VIRGIL RULE,
Attorneys for Defendant in Error Rule.

10706

Supreme Court of the United States.

No. 115.—October Term, 1903.

The Wabash Railroad Company, Plaintiff in Error, *vs.* Alexander Flannigan and Virgil Rule.	In error to the St. Louis Court of Appeals of the State of Missouri.

[January 4, 1904.]

The action wherein was entered the judgment which is sought to be reviewed by this writ of error was begun on December 20, 1900, by the filing in the Circuit Court of the city of St. Louis of a petition on behalf of the Wabash Railroad Company, the plaintiff in error in this court. The defendants named in the petition were Alexander Flannigan and Virgil Rule, the present defendants in error. The cause of action was ultimately embodied in a third amended petition, filed, by leave of court, on April 15, 1901. From a recital made in the opinion of the St. Louis Court of Appeals the following summary of the allegations of that pleading is made:

After asserting its existence as a consolidated corporation from a named date, plaintiff alleged that it was indebted, on June 10, 1891, to one Tourville, for wages, in the sum of $81.98; that an action to recover such indebtedness was instituted by Tourville in a court of the State of Missouri on the date named, and that a judgment was rendered in favor of Tourville, which had been finally affirmed by this court; that in April, 1895, the defendant Flannigan recovered judgment against Tourville and the railroad company in a court of the State of Illinois, the railroad company being made garnishee in the action on account of the original indebtedness of $81.98 to Tourville, above mentioned; that Tourville had assigned the judgment obtained by him in the Missouri court to the defendant Virgil Rule, and that both the defendants Flannigan and Rule were undertaking to collect their respective judgments from the railroad company. The court was asked to permit a deposit in court of the sum of $81.98 and interest, and to require the defendants to interplead and to have determined their rights in respect to such deposited sum. The defendant Rule was served with summons, and a written appearance was filed on behalf of Flannigan, who was a non-resident.

In stating the subsequent steps in the litigation we shall omit reference to the facts which clearly have no relevancy to the alleged Federal questions.

Following the filing of the third amended petition an application was made for the allowance of a temporary injunction against the defendants, prohibiting them for attempting to enforce their respective judgments pending the determination of the action. An order was thereupon made temporarily restraining the defendants, and requiring them "to show cause, if any they have, why a temporary injunction should not be issued herein, and the relief prayed for in said third amended petition should not be granted." A "return" to this order to show cause was filed on behalf of the defendant Rule, and therein was set forth numerous reasons why a temporary injunction should not issue and the relief prayed in the third amended petition should not be granted. Flannigan answered, admitting each and every allegation therein, and claiming priority of lien and right of payment out of the so-called fund of $81.98. Thereafter, on April 22, 1901, the plaintiff filed a motion for the relief prayed for, notwithstanding the aforesaid return of Virgil Rule, and numerous reasons were stated in support of the motion. On April 29, 1901, the court entered the following order:

"Now at this day come the parties herein by their respective attorneys, and the order issued herein on April 15, 1901, commanding the defendants to show cause why a temporary injunction should not be granted against them, coming on for hearing upon the pleadings, affidavits and proofs adduced, and the court having duly considered the same, and being sufficiently advised of and concerning the premises, doth order that the prayer of plaintiff's bill be and is denied. It is further ordered by the court that the restraining order granted against defendants on April 15, 1901, be and is hereby dissolved."

A motion for rehearing was filed and overruled. The motion was based upon the assumption that the order in question operated as a judgment dismissing the petition. The fifteenth and last ground of the motion and the first and only specific reference made to the Constitution of the United States in the proceedings up to that time was as follows:

"Fifteenth. Because the court erred in refusing to give full faith and credit to the judgment of a sister State, as required by the Constitution and laws of the United States."

On appeal the St. Louis Court of Appeals entered a judgment affirming in all things the "judgment" of the trial court. (74 S. W. 691.) No allusion was made in the opinion to any constitutional question. Application was then made to transfer the cause to the Supreme Court of Missouri, upon the claim that it involved "a construction of section one of article four of the Constitution of the United States." The application was denied. A petition was next presented to the presiding judge of the St. Louis Court of Appeals, praying the allowance of a writ of error from this court. The petition was overruled, for the following stated reasons:

"In *Wabash Railroad Company* v. *Tourville*, (179 U. S. 322,) the judgment herein involved came under review. The validity of the Tourville judgment, as we understand the opinion, was sustained, and its priority over that of Flannigan was adjudged. In the face of this decision we deny the writ."

A writ of error was afterwards allowed by a justice of this court. The error assigned embraced the following alleged Federal questions:

"19. Your petitioner charges and avers that in said suit, while the same was pending in said Circuit Court and in said Court of Appeals, the construction of the following clauses of the Constitution of the United States was drawn in question, viz:

"The following clause of section 1, article IV: 'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.'

"Section 11, article IV: 'The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.'

"The following clause of section 1, article XIV, of amendments to the Constitution: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'

"Your petitioner says that the decisions of courts on said clauses of the Constitution in said cause were against the rights, title, privilege and exemption specially set up and claimed under said clauses of said Constitution by your petitioner."

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The opinion of this court, upholding the correctness of the judgment entered by the Circuit Court of Missouri in favor of Tourville, referred to in the preceding statement, was announced on December 3, 1900. (*Wabash R. R. Co.* v. *Tourville*, 179 U. S. 322.) The action now under review was begun seventeen days later. In the action which was under review in 179 U. S. the contention on behalf of the railroad company was that, despite the fact that on March 26, 1895, the Supreme Court of Missouri, on appeal by Tourville, had entered a judgment directing the St. Louis Court of Appeals to render judgment in favor of Tourville for the full amount of wages earned by him, the railroad company was yet entitled, after the filing in the St. Louis Court of Appeals of the mandate of the higher court, to offset against the amount of the judgment directed to be entered in favor of Tourville, the sum of the judgment recovered by Flannigan in the attachment suit which had been instituted in Illinois subsequently to the decision of the Supreme Court of Missouri in Tourville's action. The claim of jurisdiction in this court to review the judgment of

the Supreme Court of Missouri, just referred to, was based upon the contention that the refusal of the Missouri courts to give to the Illinois judgment in favor of Flannigan the effect claimed for it by the railroad company was a denial of the full faith and credit to which that judgment was entitled by virtue of section 1 of article IV of the Constitution of the United States. As already stated, the present action was begun after the opinion reported in 179 U. S. 322, affirming the judgment of the Supreme Court of Missouri, was delivered.

The controversy in the present action relates to the same judgments which were under consideration in this court in the prior action, and the purpose of the railroad company in this, as in the previous case, was to limit the amount which might be collected by the holders of the respective judgments against it to a sum which in the aggregate would not be in excess of the indebtedness to Tourville upon his original claim. In substance, therefore, the present action is but an attempt by indirection to do that which the Supreme Court of Missouri and this court has held in the prior action could not be done.

The constitutional questions now urged on behalf of plaintiff in error are that the dismissal of its petition for interpleader was a denial of full faith and credit to the garnishment judgment rendered by the Illinois court, and that the denial of the relief prayed for also violated the due process clause of the Fourteenth Amendment to the Constitution of the United States.

The objection, last stated, need not be further noticed, as it was asserted for the first time in the petition for the allowance of a writ of error from this court. We think it unavoidably results also that the claim of the protection of the due faith and credit clause of the Constitution of the United States here relied on is without merit. Nowhere in its petition for interpleader or in the proceedings had thereunder in the Missouri courts did the railroad company set up rights specifically based upon the Illinois judgment, claim for that judgment an effect which, if denied to it, would have impaired its force and effect, nor did the railroad company predicate any right to the relief demanded upon the effect due to the Illinois judgment. The relief asked by the railroad company in substance tended on the contrary to lessen the force and effect both of the Missouri and Illinois judgments. It was sought to change the status of the company from that of a general debtor for the amount due upon each judgment and to engraft upon the judgments a limitation to a single satisfaction out of a specific fund. In its petition the railroad company expressly alleged its inability to determine whether the Illinois or the Missouri judgment possessed a priority of right to payment out of the so-called fund. Clearly, also, even the owner and holder of the Illinois judgment could not, in reason,

contend that the judgment of the Missouri court complained of had the effect of denying full faith and credit to the judgment of a sister State. As the settled rule in this court is that where the Federal question asserted to be contained in a record is manifestly lacking all color of merit, the writ of error must be dismissed, (*Swafford* v. *Templeton*, 185 U. S. 487, 493, and cases cited,) it results that the writ of error in this case must be dismissed for want of jurisdiction.

Writ of error dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.